

THE TENNESSEE AND GREAT SOUTHERN RAILROAD COMPANY
MEMPHIS, TENNESSEE

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MEMPHIS, TENNESSEE

MEMPHIS, TENNESSEE, MAY 1, 1900

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 274.

THE UNITED STATES, APPELLANT,

vs.

THE TENNESSEE AND COOSA RAILROAD COMPANY,
HUGH CARLISLE, ET AL.APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE FIFTH CIRCUIT.

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a United States of America. Fifth judicial circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1896, and held in the court room of said court, in the city of New Orleans.

Before the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit; the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the Honorable William T. Newman, United States district judge for the northern district of Georgia.

THE UNITED STATES, APPELLANT,
vs.
 THE TENNESSEE AND COOSA RAILROAD COMPANY,
 Hugh Carlisle, et als., appellees.

Be it remembered that heretofore, to wit, on the 19th day of September, 1896, a transcript of the record of the above-styled cause from the circuit court of the United States for the northern district of Alabama was filed in the office of the clerk of said United States circuit court of appeals, in the words and figures following, to wit;

1 United States circuit court of appeals, fifth judicial circuit.—
 term, 1895.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
 THE TENNESSEE AND COOSA RAILROAD COMPANY,
 Hugh Carlisle, et als., appellees.

Original bill.

To the honorable justice and judges of the circuit court of the United States for the southern division of the northern district of Alabama:

The United States of America, by its Attorney-General, brings this, its bill of complaint, against the Tennessee & Coosa Railroad Company, a corporation created by and existing under the laws of the State of Alabama, and a citizen of the northern division of said northern district of Alabama, and the Nashville, Chattanooga & St. Louis Railway Company, a corporation chartered under the laws of the State of Tennessee, the Manhattan Trust Company, a corporation chartered by and existing under the laws of the State of New York, and Hugh Carlisle, who is a resident citizen of the county of Marshall, in the said northern division of the northern district of Alabama, W. H. McCord, William Curry, W. T. McCord, J. T. Hambrick, W. R. Frazier, Mrs. S. S. Fletcher, Joseph J. Pugh, W. A. Darnell, John W. Darnell, W. W. Harper, W. A. J. Mathews, W. F. Stone, J. B. Hopkins, W. B. Hays, N. W. West, W. H. Haynes, Jola J. Patterson, James P. Stevenson, B. C. Bartlett, Asa Young, C. T. Norton, W. L. Lowe, E. J. Barksdale, Walter Davis, John Smith, Willis W. Curry, Benjamin Scott, James S. Johnson, A. J. Fletcher, B. O. Scott, each and all of whom are resident citizens of the northern division of the said northern

district of Alabama; Jasper M. Dixon, John K. Roe, Madison Cerns, John Eason, David Scott, John H. Fletcher, John Pepper, Bethel L. Leith, J. P. Scott, J. J. Smith, J. W. Whitt, T. J. Bates, Joe Slaton, E. A. Tony, W. H. Baker, Thomas Cassels, Lindsey Holland, Solomon Beginfield, Solomon P. Ledbetter, Stephen L. Rodgers, George E. W. Bruce, J. H. Bruce, John Mizzell, William Avery, John Collier, W. W. Elkins, William Rhodes, Tom Simpson, Jack Keigle, T. B. Thrasher, B. F. Burns, G. F. Amons, Lewis Whitt, Anderson Whitt, Dock Gilbreath, J. W. Jones, R. W. Clay, A. M. Gilbreath, all of whom are residents each and citizens of the southern division of the northern district of Alabama, and thereupon orator complains and says:

1. That on and prior to the 3d day of June, A. D. 1856, the United States of America was the owner in fee, and was seized and possessed of certain tracts or parcels of land lying and being situated in the State of Alabama, in the counties of Blount, De Kalb, Etowah and Marshall, amounting in the aggregate to 67,784 96-100 acres—sixty-seven thousand seven hundred and eighty-four and ninety-six one-hundredth acres—as follows, viz: In sections 1, 3, 5, 9, 13, 15, 23, 25, 27, 35, in township 10, range 2, and in sections 7, 17, 21, 19, 29, 31, township 10, range 3, and also in sections 5, 9, 17, 19, 27, 35, 33, in township 9, range 2; in sections 1, 11, 13, 23, township 9, range 1, and in section 31, township 8, range 2, all of which said lands lie in the county of Blount, and within the jurisdiction of the said circuit court for the southern division of the northern district, and also the following lands lying and being situate within the jurisdiction aforesaid, in the county of De Kalb, viz: in sections 1, 11, 15, 13, 23, 27, 35, township 7, range 5, and in section 3, township 8, range 5, and in sections 3, 11, 15, 23, 25, 27, and 35, township 9, range 5, and in section 1, township 10, range 5; and also the following lands situated within the jurisdiction aforesaid, and in the county of Etowah, in the State of Alabama, viz: in sections 7, 9, 11, 15, 17, 21, 23, 29, and 33, township 10, range 5; and also the following lands lying in the county of Marshall, in the northern division of the said northern district, viz: in sections 9, 17, 19, 21, 29, 31, and 33, township 7, range 5, and sections 23, 25, 27, 35, 33, township 7, range 4, and in sections 5, 7, 9, 17, 19, 21, 29, 33, 31, township 8, range 5, and sections 1, 3, 5, 7, 9, 11, 13, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, township 8, range 4, and in sections 13, 21, 23, 25, 27, 29, 31, 33, and 35, township 8, range 3, and in sections 23, 27, 33, township 8, range 2, and in sections 5, 7, 9, 19, 21, 29, 31, and 33, township 9, range 5, and in sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, township 9, range 3, and in sections 1, 11, 13, and 25, township 9, range 2; detailed descriptions of all of said lands by subdivision of said sections, townships, and ranges are hereto attached, marked Exhibit A, and prayed to be taken as a part of this bill, as fully as if the same were herein set forth at length, with leave to refer thereto as often as may be necessary.

2. That on and prior to the 3d day of June, A. D. 1856, the United States was the owner in fee and was in possession of certain tracts or parcels of land lying and being situate in the county of Etowah, in the State of Alabama, in the southern division of the northern district of Alabama, and within the jurisdiction of this court, and in sections 7, 17,

19, 29, and 31, in township 10, range 6, and in sections 13, 23, 25, 27, 33, and 35, township 10, range 5, and in sections 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 27, 29, 31, 33, township 11, range 6, and sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, and 35, township 11, range 5, and in sections 13 and 25, township 11, range 4, and section 7, township 12, range 6, and sections 5, 7, 15, and 19, township 12, range 5, and in section 13, township 12, range 4; all of which said last described lands aggregate in amount 16,531 and 93-100 acres, and a detailed description of which is given by the subdivision of said sections, townships, and ranges, in Exhibit B, which is hereto attached and

4 prayed to be made a part of this bill, as fully as if the same were therein set forth at length, with leave to refer thereto as often as may be necessary.

3. That on the said 3d day of June, A. D. 1856, an act of the Congress of the United States, entitled an act granting public lands in alternate sections to aid in the construction of certain railroads in said State, was approved. That by and under said act certain lands were granted to the State of Alabama, in trust, for the benefit of certain railroads therein named, one of which was the said Tennessee and Coosa Railroad, which was chartered for the purpose of constructing a railroad from the Tennessee River, at or near Gunter's Landing, to Gadsden, on the Coosa River; that, under and by virtue of said act, there was granted, as aforesaid, to the State of Alabama, for the purpose of aiding in the construction of said railroad, every alternate section of land, designated by odd numbers, for six sections in width on each side of said road, but in lieu of any of said alternate odd-numbered sections within such six-mile limit, which the United States had theretofore legally sold, or to which the right of pre-emption had legally attached, an equal amount of lands within fifteen miles from the line of said road could be selected by an agent or agents to be appointed by the governor of Alabama, subject to the approval of the Secretary of the Interior, from the lands of the United States outside the six-mile limit, and within the fifteen-mile limit, in alternate sections designated by odd numbers, most contiguous to the tiers of sections within six sections in width on each side of the railroad from Gadsden to Gunter's Landing.

4. That in and by said act of Congress of June 3, 1856, it was provided that the lands thereby granted to the State of Alabama, should be disposed of by said State, only in manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections, for each of the roads named in said act, and included within a continuous length of twenty miles of each of said roads named therein, may be sold, and when the governor of Alabama should certify to the

Secretary of the Interior that any twenty continuous miles of

5 any of said roads were completed, then another quantity thereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of said roads, may be sold—and so from time to time until said roads were completed, and if any of said roads were not completed within ten years, no further sales should be made, and the lands unsold should revert to the United States.

5. Orator avers that the lands granted as aforesaid were made by the said act of June 3, 1856, subject to the disposal of the State of Alabama, and that the said State, through its legislature, by an act of the sixth biennial of the general assembly of Alabama, approved January 20, 1858, omitted from the printed acts of that session, and printed as act No. 1 of the seventh biennial session of the general assembly of Alabama, accepted the grant of said lands upon the terms and conditions and under the restrictions contained in said act of June 3, 1856, and granted a portion of the lands therein specified to the Tennessee & Coosa Railroad Company upon conditions therein set forth.

Orator further states unto your honors that the Tennessee & Coosa Railroad Company has constructed ten and 22-100 miles of a railroad along the line of definite location of survey, to-wit: from Gadsden, on the Coosa River, northward toward Gunter's Landing, but orator shows unto your honors, that said railroad company never constructed or completed twenty miles of railroad at any time prior to September 29, 1890, and did not construct or complete said ten and 22-100 miles, or any portion thereof, prior to June 3, 1866.

And orator avers that under and by virtue of said act of June 3, 1856, all the lands unsold in accordance with the terms and conditions of said act at the expiration of ten years from the date thereof, reverted to the United States; and orator avers that the said Tennessee & Coosa Railroad Company did not sell any of the lands granted to aid in its construction prior to June 3, 1866, and that said railroad company never

became entitled, under said act, to said land, nor to the possession thereof. But orator avers that the said railroad company selected the lands hereinbefore described, and of which a detailed description is given in Exhibits A and B hereto, within the six-mile limit, and such selections were approved by the Secretary of the Interior of the United States, and that lands within the fifteen-mile limit were selected and approved as shown by said Exhibits A and B, hereto attached.

6. Orator avers that said selection and approval was made upon the filing of a map of the definite location of the said railroad, and not upon any certificate of the governor of Alabama, and that twenty continuous miles of said railroad had been completed, for no section of twenty miles of said railroad was constructed or completed before the passage of the act of Congress, approved September 29, 1890, entitled "An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes;" that by virtue of said selections and approvals, the legal title to the lands described in this bill and Exhibits A and B became and were vested in the State of Alabama as trustee; and that the State of Alabama, through its legislature, executed the said trust, granting all the title vested in it by said act of June 3, 1856, to said railroad company, upon condition that the said railroad company shall comply with the terms and conditions and restrictions contained in the said granting act of June 3, 1856.

7. Orator further states that the United States became entitled to the possession of all the lands described in the first paragraph of this bill, and Exhibit A, on the 4th day of June, 1866, and to the possession of all the lands described in the second paragraph of this bill, and Exhibit B, so far as any part thereof were selected by or for or approved to said

Tennessee & Coosa Railroad Company, and orator states that the United States became entitled to recover both the title to and the possession of all of said lands on the 4th of June, 1866, so far as the Tennessee & Coosa Railroad Company is concerned. Orator further states that under

7 and by virtue of the act of Congress, approved September 29, 1890, the United States resumed title to all lands theretofore granted to any State to aid in the construction of a railroad, which were opposite to and coterminous with the portion of any of such railroad not completed and in operation at the date of the passage of said act, and for the construction and benefit of which said lands were granted, and all such lands were declared by said act to be part of the public domain of the United States. Orator further states and shows unto your honors, that none of the lands described in paragraph 1 and Exhibit A to this bill were opposite to and coterminous with any portion of said Tennessee & Coosa Railroad, which was constructed and completed at the date of the passage of said act.

8. Orator further states to your honors, that the following named persons, who are each and all resident citizens of the Southern Division of the Northern District of Alabama are in possession of certain parts of these lands, which is particularly shown hereinafter, viz:

Lewis Whitt is in possession of northwest quarter of section 15, township 10, range 5.

Anderson Whitt is in possession of north half of northeast quarter of section 15, township 10, range 5.

Dock Gilbreath is in possession of east half of northeast quarter of section 15, township 10, range 5.

A. M. Gilbreath is in possession of southeast quarter of section 9, township 10, range 5.

R. W. Clay is in possession of north half of northwest quarter of section 9, township 10, range 9.

J. W. James is in possession of west half of northeast quarter and east half of northwest quarter of section 9, township 10, range 5.

Wm. Rhodes is in possession of southwest quarter of section 29, township 10, range 5.

G. W. Bruce is in possession of west half of southwest quarter, and a fraction, being 100 acres more or less, of section 17, township 10, range 5.

J. H. Bruce is in possession of south half of northwest quarter of section 17, township 10, range 5.

8 John Mizzell is in possession of southeast quarter of section 17, township 10, range 5.

W. W. Elkins is in possession of northwest quarter of section 29, township 10, range 5.

W. M. Rhodes is in possession of southwest quarter of section 29, township 10, range 5.

Tom Simpson is in possession of southeast quarter of section 29, township 10, range 5.

Jack Keigle is in possession of southwest quarter of section 21, township 10, range 5.

T. B. Thrasher is in possession of northeast quarter of section 17, township 10, range 5, east.

B. F. Burns is in possession of southwest quarter of section —, township 10, range 5.

G. T. Amos is in possession of northwest quarter of section 3, township 10, range 5.

DE KALB COUNTY.

Joe Slaton is in possession of north half of northeast quarter of section 25, township 9, range 5.

E. A. Toney is in possession of northeast quarter of section 25, township 9, range 5.

ETOWAH COUNTY.

J. J. Smith is in possession of northwest quarter of section 11, township 10, range 5.

W. H. Baker is in possession of southwest quarter of northeast quarter and southeast quarter of northwest quarter and northeast quarter of southwest quarter of section 1, township 10, range 5.

Thomas Cassels is in possession of east half of northeast quarter, township 10, range 5.

Lindsey Holland is in possession of south half of southwest quarter, and northwest of southwest quarter, and southwest quarter of northwest quarter, township 10, range 5.

Solomon A. Beginfield is in possession of northwest quarter of northwest quarter of section 13, township 10, range 5.

9 Solomon P. Leadbetter is in possession of north half of section 9, township 10, range 5. 320 acres.

Stephen Rogers is in possession of the east half of southwest quarter of section 17, township 10, range 5.

Jasper M. Dixon is in possession of southwest quarter of section 15, township 9, range 5, east.

John K. Roe is in possession of southeast quarter of section 15, township 9, range 5.

Madison Cerns is in possession of northeast quarter of northeast quarter of section 15, township 9, range 5.

John Eason is in possession of northeast quarter of northwest quarter of section 15, township 9, range 5.

John H. Fletcher is in possession of northwest quarter of northeast quarter and west half of northeast quarter, also northeast quarter of northwest quarter of section 23, township 9, range 5.

John Pepper is in possession of southwest quarter of southwest quarter of section 23, township 9, range 5.

J. R. Scott is in possession of southeast quarter of southwest quarter of section 23, township 9, range 5.

Bethel L. Leith is in possession of north half of southwest quarter of section 23, township 9, range 5.

J. J. Whitt is in possession of east half of northwest quarter of section 25, township 9, range 5.

That each and all of said persons claim to hold some interest in the said lands, which orator is informed and believes, and therefore states, is derived from and under contracts made by and between them and said Tennessee & Coosa Railroad Company, or its grantees.

But orator expressly charges and states that none of said contracts were made prior to June 4, 1866, by which said persons above named claim to hold these lands.

9. Orator further states unto your honors, that the following
10 named persons, who are each and all resident citizens of Northern Division of the Northern District of Alabama, are in possession of certain parts of these lands, which are more particularly shown hereinafter:

MARSHALL COUNTY.

W. H. McCord is in possession of the northeast quarter of southwest quarter of section 11, township 9, range 5.

Willis Curry is in possession of northwest quarter of southeast quarter of section 25, township 8, range 3.

W. T. McCord is in possession of north half of northwest quarter of section 3, township 9, range 4; north half of northeast quarter of section 15, township 9, range 4.

J. T. Hambrick is in possession of southeast quarter of section 3, township 9, range 4, and northwest quarter of northwest quarter of section 11, township 9, range 4.

W. R. Frazier is in possession of the north half of the northeast quarter of section 11, township 9, range 4.

S. S. Fletcher is in possession of north half of northwest quarter, and the undivided north half of the southwest quarter of northwest quarter, also same in southeast quarter of northwest quarter, section 15, township 9, range 4.

Joseph J. Pugh is in possession of the west half of the southeast quarter and east half of the southwest quarter of section 29, township 8, range 4.

W. A. Darnell is in possession of southeast quarter of southwest quarter and northwest quarter of southwest quarter and southwest quarter of northwest quarter of section 25, township 8, range 3.

John W. Darnell is in possession of east half of northeast quarter of section 35, township 8, range 5.

W. W. Harper is in possession of northeast quarter of southwest quarter and south half of northwest quarter, and southwest quarter of northeast quarter; also the northwest quarter of southwest quarter of section 25, township 8, range 3.

W. A. J. Mathews is in possession of south half of southeast quarter and northwest quarter of southwest quarter and southeast quarter of northwest quarter of section 25, township 8, range 3.

11 W. T. Stone is in possession of south half of northeast quarter of section 25, township 8, range 3.

J. D. Hopkins is in possession of southwest quarter of northwest quarter of section 31, township 8, range 4.

W. B. Hayes is in possession of the southwest quarter of northeast quarter and southeast quarter of northwest quarter and northwest quarter of southeast quarter and northeast quarter of southwest quarter of section 31, township 8, range 4.

N. W. West is in possession of the southeast quarter of northwest quarter and southwest quarter of northwest quarter, section 5, township 9, range 4.

W. H. Haynes is in possession of the southwest quarter of northwest quarter of section 11, township 9, range 4; also of the northeast quarter of northwest quarter of section 11, township 9, range 4.

John J. Patterson is in possession of southeast quarter of southeast quarter of section 19, township 9, range 5 east; also northwest quarter of northeast quarter and northeast quarter of northwest quarter of section 19, township 9, range 5 east; also southeast quarter of northwest quarter and northeast quarter of northeast quarter, section 19, township 9, range 5. Also southwest quarter, section 17, township 9, range 5 east.

W. T. McCord is in the possession of the following land: North half of northwest quarter of section 3, township 9, range 4.

Benjamin C. Scott is in possession of the following land: North half of northwest quarter of section 23, township 9, range 4 east.

James S. Johnson is in possession of the following land: Southwest quarter of northwest quarter of section 5, township 9, range 4 east.

A. J. Fletcher is in possession of the following land: North half of northwest quarter and north half of southwest quarter of the northwest quarter of section 23, township 9, range 4 east.

B. O. Scott is in possession of the following land: North half of northwest quarter of section 23, township 9, range 4 east.

James P. Stephenson is in possession of the southeast quarter of section 7, township 9, range 5 east.

B. C. Bartlett is in possession of the southwest quarter of the
12 northeast quarter and southeast quarter of northwest quarter of section 3, township 8, range 4.

Asa Young is in possession of southwest quarter of northeast quarter and northwest quarter of southeast quarter of section 35, township 8, range 4.

C. T. Norton is in possession of northeast quarter of northwest quarter, and the northwest quarter of southeast quarter, and the northwest quarter of southeast quarter of *southeast quarter*, and southeast quarter of northwest quarter of section 25, township 8, range 3.

W. L. Love is in possession of the southeast quarter of northeast quarter, and the south half of southeast quarter, and southwest quarter of northeast quarter of section 11, township 9, range 3 east.

E. J. Barksdale is in possession of the north half of southeast quarter and the south half of northeast quarter of section 35, township 6, range 4.

Walter Davis is in possession of the northeast quarter of northwest quarter and northwest quarter of northeast quarter of section 35, township 8, range 4.

John Smith is in possession of the south half of southeast quarter and west half of northeast quarter; also east half of northeast quarter and northeast quarter of southeast quarter of section 5, township 10, range 5 east.

And that each and all of said persons claim to hold some interest in said lands, which orator is informed and believes, and, therefore, states, is derived from and under contracts made by and between them and the said Tennessee and Coosa Railroad Company or its grantees, but orator expressly charges and states that none of said contracts were made prior to June 4, 1866, by which said persons named in this section claim to hold these lands.

10. Orator further states, charges, and avers that on, to wit, the 4th day of April, 1887, the said Tennessee and Coosa Railroad Company executed and delivered to Hugh Carlisle an instrument proposing to be a quit claim deed, in and by which the said railroad company

13 attempted to convey said Hugh Carlisle seventeen thousand four hundred and ten and 33-100 acres of land which were included in the said grant to the said railroad company, and which were selected by or for said railroad company and approved to it, as shown hereinbefore. That said conveyance recites that it was made on a consideration of twenty-one thousand seven hundred and ninety (\$21,790) dollars, paid to said railroad company by said Carlisle. A copy of said conveyance is hereto attached, marked exhibit D, and prayed to be taken as a part of this bill, as fully as if the same were herein set forth at length, with leave to refer thereto as often as may be necessary. Orator states that the land described in said conveyance (Exhibit D) was part of township 10, range 5; township 10, range 6; township 11, ranges 4, 5, and 6; township 12, ranges 4, 5, and 6; the particular sections and subdivisions of sections being shown by Exhibit D.

Orator further shows that on the 7th day of February, 1887, the said railroad company executed and delivered to said Hugh Carlisle a certain instrument in and by which it attempted to convey to Hugh Carlisle, twenty-three thousand seven hundred and thirty-nine and 51-100 (23,739 51-100) acres of land, reciting therefor the payment by said Carlisle of the sum of fifty-nine thousand three hundred and forty-eight and 70-100 (\$59,348 70-100,) that said lands were located in township 8, ranges 2, 3, and 4, township 9, ranges 3, 4, and 5, township 10, ranges 3 and 5. The particular sections and subdivisions thereof being shown in the said conveyance, a true copy of which is hereto attached, marked Exhibit E, and prayed to be taken as a part of the bill as fully as if herein set forth at length, with leave to refer thereto as often as may be necessary.

Orator states, charges, and avers that both of said instruments were made during the year 1887, more than twenty years after the expiration of the time within which the act of June 3, 1856, required the said railroad to be constructed and completed. Orator avers that at the time when said instruments were executed the said railroad company had no right, power, or authority to execute said instruments or to convey any right,

14 title, or interest in or to said lands, and that the officers, agents, and directors of the said railroad company and the said Hugh Carlisle well knew this fact, and for the purpose and with the intention of preventing the reversions of said lands to the United States the said company executed, and the said Carlisle accepted the pretended conveyances; that while said conveyances recite a valuable consideration paid by said Carlisle for said lands, in truth, and in fact, no money or other thing of value was paid therefor by said Carlisle, but the whole transaction was merely a device to mislead and deceive and for the purpose of enabling the said Hugh Carlisle to set up and claim that he held said lands as a purchaser for value, and in good faith from said railroad company. That said conveyances were not made, nor was the said land sold for the purpose of aiding in the construction of said railroad or any part thereof, that no part of any consideration recited to have been paid for said lands

was used in the construction of said railroad, that said Carlisle was, and is not, a bona fide purchaser for value of any of said lands, but a purchaser mala fide, well knowing that the said purchase was in violation of the term of the act of June 3, 1856.

Orator further avers that while said Carlisle claims to own these lands under the conveyance made to him by said railroad company, he in truth, and in fact, holds the same under a secret trust for said railroad company and the stockholders thereof, and orator further charges and avers that said Carlisle and his near relatives were the largest owners of the stock of said railroad company, and at the time these conveyances were made they elected themselves and other persons subject to their will and control directors of said railroad company, and by resolution of this board of directors so composed the conveyances marked Exhibits D and E were made and executed to said Carlisle for the purpose of defrauding your orator, the United States, out of these lands.

11. Orator is informed, and therefore states, that the Nashville, Chattanooga & St. Louis Railway Company, and the Manhattan Trust Company, of New York, each claim some interest in and to all or a very large part of the lands granted to the said railway company under some kind

of contracts or agreements with either the Tennessee & Coosa
15 Railroad Company or Hugh Carlisle, the exact nature and character of which orator can not state, but the said Nashville, Chattanooga & St. Louis Railway Company and the Manhattan Trust Company, of New York, can; and orator further states that said contracts or agreements under which said Nashville, Chattanooga & St. Louis Railway Company, and the Manhattan Trust Company, of New York, claim these lands or interest therein, were made since the 4th day of May, 1887, and the said Nashville, Chattanooga & St. Louis Railway Company and the Manhattan Trust Company, of New York, entered into said contracts and agreements, with full knowledge of the rights of your orator in and to said lands by reason of the facts set out in this bill of complaint.

12. Orator further states that the Nashville, Chattanooga & St. Louis Railway Company and the Manhattan Trust Company are both non-residents of Alabama, and that neither of them are in possession of any part of these lands, and neither of them have ever been in possession of any part of said lands, and orator further avers that all the other defendants named herein are in possession of said lands or some part thereof trespassing on the same, and are insolvent.

13. Orator further states that many thousands of acres of the lands described in this bill are covered with forests of yellow pine and other valuable timber trees, and that the defendants, and other persons whose names are to orator now unknown, are now engaged and employed in cutting and removing said timber from said lands, are committing trespasses and waste thereupon, and will continue to commit waste and remove said timber unless they are restrained from so doing by injunction issued out of this honorable court, restraining them, their agents, servants, and employees from further waste.

14. Orator further shows that there are on said lands valuable mines of coal, and iron ore, and manganese, which said defendants, or persons claiming under them, are operating, thereby destroying the value of said

16 lands and committing waste thereupon, and which said waste and destruction will continue unless said person shall be restrained therefrom by an injunction or other appropriate writ issued out of this court.

15. Orator further states that the Tennessee & Coosa Railroad Company, and the said Carlisle, are continually receiving rents, incomes, and profits from said lands, from the destruction of timber thereon and the carrying away of valuable minerals therefrom, and are collecting money and other things of value as purchase money for lands already sold by them to various persons; and the said defendants are continually making contracts of various kinds for the alienation of said lands, or of some interest therein; and orator states, charges, and avers that it is necessary to have a receiver appointed by this court to take possession of the property described in this bill, to protect and preserve the same, except the land described in the second paragraph of this bill; but orator states to your honors that it is necessary that the said defendants, and every one of them, be enjoined and restrained from all intermeddling or interference with the said lands described in the said paragraph No. 9 to this bill of complaint.

16. Orator avers that by reason of the facts stated herein above, the interposition of this honorable court of equity is necessary, and that your orator is remediless by the course of the common law.

Orator further states that the said defendants, their agents, servants, and employees have for many years been cutting and removing timber from said lands, and removing coal, iron ore and other valuable minerals therefrom, and have been committing waste and trespasses thereon, whereby your orator has become and is now entitled to recover large sums in damages from said defendants, on a proper accounting in a court of equity.

Wherefore the premises considered, your orator prays that proper process of subpoena may issue out of this honorable court directed to the following named persons, to-wit: The Tennessee & Coosa Railroad Company, and Hugh Carlisle, Jasper M. Dixon, John K. Roe, Madison

17 Cerns, John Eason, David Scott, John H. Fletcher, John Peper, Bethel L. Leith, J. P. Scott, J. J. Smith, J. W. Whitt, T. J. Bates, Joe Slaton, E. A. Toney, W. H. Baker, Thomas Cassells, Lindsey, Holland, Solomon Beginfield, Solomon P. Leadbetter, Stephen L. Rogers, George W. Bruce, John Mizzell, William Avery, John Collier, W. W. Elkins, William Rhodes, Tom Simpson, Jack Keigle, T. B. Thrasher, B. T. Burns, G. T. Amos, Lewis Whitt, Anderson Whitt, Doc Gilbreath, J. W. Jones, R. W. Clay and A. M. Gilbreath, W. H. McCord, William Curry, W. F. McCord, J. T. Hambrick, W. R. Frazier, Mrs. S. S. Fletcher, Joseph J. Pugh, W. A. Darnell, W. W. Harper, W. A. J. Matthews, John J. Patterson, James P. Stevenson, B. C. Bartlett, Asa Young, C. T. Norton, W. L. Lowe, E. J. Barksdale, Walter Davis, John Smith, Willis W. Curry, Benjamin Scott, James S. Johnson, A. J. Fletcher, B. O. Scott; that the Nashville, Chattanooga & St. Louis Railway Company, which is a resident citizen of the State of Tennessee, and the Manhattan Trust Company, which is a resident citizen of the State of New York, be made parties respondent to this bill, and that notice be given them of the filing of this bill by proper order of publication for such time as may be prescribed in the said order, and in

accordance with the statutes and the rules of this honorable court, commanding and requiring them and each of them, to plead, answer or demur to this bill of complaint within the time limited by law, and the rules of this honorable court; that a suitable person may be appointed as receiver, to sue for, collect and receive all sums that may be due or owing to orator—for, or account of any and all waste and trespass committed on or upon said lands, and to take possession, charge and control of said lands described in the first paragraph of this bill and to safely keep, preserve and protect the timber and timber trees thereon as well as all logs, timber and timber cut therefrom, and now remaining thereon, or adjacent thereto, together with all buildings, structures and improvements erected and being thereon, except the dwelling houses, outbuildings and necessary appurtenances thereto, which are in possession and occupancy of purchasers for value and in good faith from said railroad company and except the roadbed, right of way, station houses, and other buildings of like character, belonging to said Tennessee & Coosa Railroad Company. That

18 pending this litigation, proper writs of injunction shall be issued out of this honorable court, directed to said Tennessee & Coosa Railroad Company, Hugh Carlisle, the Nashville, Chattanooga & St. Louis Railway Company, and the Manhattan Trust Company, their agents, employees and servants, enjoining and restraining them, and each of them, from removing or causing to be removed, any timber logs, timber, coal, iron ore or other valuable mineral from or off said lands, or from going on or trespassing upon said lands—and from collecting, receiving or taking possession of any money, property or thing of value, as purchase money, rent, income or profit from any of said land.

And upon the final hearing of this cause, said injunction may be made perpetual; that on said final hearing, this honorable court will render a decree declaring that the aforesaid selections made by or for said Tennessee and Coosa Railroad Company, as well as the approvals thereof, shall be set aside, vacated and held for naught; that any and all certificates and other evidence of title issued to said Tennessee and Coosa Railroad Company, conveying or purporting to convey said lands or any part thereof, shall be delivered by such of the defendants as may be found to have them in possession to the clerk of this court, to be by him duly canceled, and that all the rights, title and interest of every kind and description of the said defendants in and to any of the lands and property described in this bill, shall be divested out of them, and declared to be vested in the United States of America, and that the conveyances hereinabove set forth as Exhibits D and E, shall be set aside, vacated and annulled, and the said Hugh Carlisle shall be directed by the decree of this honorable court to deliver the originals thereof, within a time to be fixed by the said decree, to the clerk of this court, and that the same shall be duly canceled on the records of the several counties wherein the same have been recorded, and your orator prays your honors for all such other and further general and different relief as the facts will warrant and as to justice doth appertain, and orator as in duty bound will ever pray, etc.

W. H. H. MILLER,

Attorney-General.

19 FOOTNOTE.—The defendants, and each and every one of them, are hereby required to answer each and every allegation, state-

ment, charge, and averment in the foregoing bill contained, from paragraph 1 to 15, inclusive, but answer under oath is hereby expressly waived.

W. H. H. MILLER,
Attorney-General.

(Endorsed:) Filed in clerk's office October 31, 1891, at 10.30 a. m.
N. W. Trimble, clerk United States court, southern division northern district of Alabama.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 20, 1891.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of land approved September 12, 1884, to the State of Alabama, under the grant made by the act of Congress approved June 3, 1856, within the conflicting limits of the several grants made by said act, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

LEWIS A. GROFF,
Commissioner of General Land Office.

List of lands in the district, of lands subject to sale at Huntsville, Alabama, within the six-mile limits, granted to the State of Alabama by the act of Congress approved the 3d of June, 1856, entitled an act granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State; being the vacant and unappropriated lands in the alternate sections designated by odd numbers, for six sections in width on each side of the railroads herein named.

EXHIBIT B.—*South of base line and east of Huntsville principal meridian, Alabama railroad list.*

Selection January 2, 1882.

Lands within the conflicting six-mile limits of three railroads, namely, the Alabama & Chattanooga, the Coosa & Tennessee, and the Coosa & Chattooga:

Southwest quarter of southeast quarter, section 15, township 11, range 6, 40.17 acres.

Lands within the conflicting six-mile limits of two railroads, namely, the Alabama & Chattanooga, and Coosa & Tennessee:

Northeast quarter of southeast quarter, section 9, township 11, range 6, 39.90 acres.

Southeast quarter of southeast quarter, section 17, township 11, range 6, 39.89 acres.

Southeast quarter of northeast quarter, section 21, township 11, range 6, 39.90 acres.

Southwest quarter of northeast quarter, section 29, township 11, range 6, 29.89 acres.

Northeast quarter of southeast quarter, section 1, township 11, range 5, 40 acres.

Southeast quarter of northeast quarter, section 13, township 11, range 5, 39.89 acres.

Northwest quarter of northeast quarter or lot 2, section 27, township 11, range 5, 39.98 acres.

Northwest quarter of southwest quarter, section 17, township 10, range 6, 40.10 acres.

Southwest quarter of southeast quarter, section 19, township 10, range 6, 40.03 acres.

Lands within the conflicting six-mile limits of the Alabama & Chattanooga and the Coosa & Chattooga railroads:

21 Northeast quarter of southeast quarter, section 1, township 10, range 7, 39.95 acres.

Northeast quarter of northwest quarter and southwest quarter of northwest quarter, section 11, township 10, range 7, 79.94 acres.

Northwest quarter of southwest quarter and northwest quarter of northeast quarter, section 21, township 10, range 7, 80 acres.

Southeast quarter of northwest quarter, section 35, township 10, range 7, 39.98 acres.

South half of northeast quarter, section 21, township 9, range 8, 79.90 acres.

Northwest quarter of northwest quarter, section 23, township 9, range 8, 37.79 acres.

Southeast quarter of northwest quarter and northeast quarter of southeast quarter, section 33, township 9, range 8, 80.22 acres.

Total, 837.53.

GENERAL LAND OFFICE, *September 4, 1884.*

I hereby certify that the foregoing list has been compared with the swamp land records of this office and found to be free from conflict.

D. T. PIERCE,

Chief of Swamp Land Division.

RAILROAD DIVISION, GENERAL LAND OFFICE, T. R. B.

September 5, 1884.

I hereby certify that the foregoing list of lands has been carefully examined and compared with the records of this office, and found free from conflict and inuring to the State of Alabama, under the acts of Congress approved June 3, 1856, and April 10, 1869, granting lands to said State to aid in the construction of certain railroads therein.

W. J. DRUMMOND,

Chief of Railroad Division.

22

GENERAL LAND OFFICE, *September 10, 1884.*

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the foregoing, on page 1, is a true and correct list of the tracts of land within the six-mile limits, granted to the State of Alabama by the act of Congress approved June 3, 1856, entitled "An

act granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State." Being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the railroads named in the foregoing within the State of Alabama, covering 837.53 acres, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said acts of June 3, 1856, and April 10, 1869, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

N. C. McFARLAND,
Commissioner.

J. K. M. C.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., September 12, 1884.

Approved, subject to the conditions and rights above mentioned.

M. L. JOSLYN,
Acting Secretary.

23

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 19, 1891.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of lands certified to the State of Alabama June 27, 1860, on account of the grant made by the act of June 3, 1856, to aid in the construction of a road from the Tennessee River at or near Gunter's Landing to Gadsden on the Coosa River, is a true and literal exemplification of the original on file in the office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

LEWIS A. GROFF,
Commissioner of General Land Office.

Coosa and Tennessee River Railroad.

List of lands in the district of lands subject to sale at Huntsville, outside of the six and within the fifteen-mile limits of the reserve, to satisfy the grant made to the State of Alabama, by the act of Congress, approved the 3d day of June, 1856, entitled "An act granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State;" being the lands selected by the agent of the governor of the State of Alabama from the lands of the United States in alternate sections, and parts of sections designated by odd numbers, nearest to the tiers of sections within six sections in width on each side of the railroad, "from the Tennessee River at or near Gunter's Landing to Gadsden on the Coosa River;" and in lieu of the lands in alternate sections designated by odd numbers, within said six

sections in width, which the United States has legally sold, or otherwise appropriated, or to which the rights of pre-emption have attached."

Approved June 27, 1860.

24 *EXHIBIT A.—South of base line and east of Huntsville principal meridian—Coosa and Tennessee River Railroad, Huntsville—Railroad list.*

Act 3d June, 1856. Fifteen-mile limits.

1. East half section and east half northwest quarter and southwest quarter of section 1, township 9 south, range 1 east, 561.30 acres.

2. Northeast quarter and southeast quarter southeast quarter, and west half southeast quarter and west half of section 11, township 9 south, range 1 east, 603.53 acres.

3. East half northeast quarter, and southeast quarter and east half southwest quarter of section 13, township 9 south, range 1 east, 319.12 acres.

4. West half northeast quarter of section 23, township 9 south, range 1 east, 80.44 acres.

5. South half southeast quarter of section 23, township 8 south, range 2 east, 80.37 acres.

6. West half northeast quarter, and northeast quarter southeast quarter, and west half southeast quarter, and east half northwest quarter, and southwest quarter northwest quarter and southwest quarter of section 27, township 8 south, range 2 east, 480 acres.

7. North half southeast quarter, and northeast quarter southwest quarter, and lots C. D and E of section 31, township 8 south, range 1 east, 260.61 acres.

8. Northeast quarter and west half southeast quarter and west half of section 33, township 8 south, range 2 east, 563.01 acres.

9. Northeast quarter, and northeast quarter southeast quarter, and west half southeast quarter, and southwest quarter of section 1, township 9 south, range 2 east, 438.76 acres.

10. All east of Ind. B'dy, and northwest quarter northwest quarter, and south half west of Ind. B'dy, of section 5, township 9 south, range 2 east, 457.12 acres.

25 11. East half section, and southwest quarter northwest quarter, and southeast quarter, and west half southwest quarter of section 7, township 9 south, range 2 east, 482.43 acres.

12. West half northwest quarter of section 9, township 9 south, range 2 east, 80 acres.

13. East half northeast quarter and east half southeast quarter of section 11, township 9 south, range 2 east, 161.10.

14. Northeast quarter southeast quarter and southwest quarter southeast quarter of section 13, township 9 south, range 2 east, 79.92 acres.

15. Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, and west fr'l of section 17, township 9 south, range 2 east, 589.63 acres.

16. All east of Ind. boundary, section 19, township 9 south, range 2 east, 257.55 acres.

17. North half of northwest quarter, section 23, township 9 south, range 2 east, 80.27 acres.

18. Lots A, C and D and north half northwest quarter and west half southwest quarter, section 25, township 9 south, range 2 east, 317.74 acres.

19. Northwest quarter of northeast quarter and east half of northwest quarter, and west half of southwest quarter, section 27, township 9 south, range 2 east, 199.87 acres.

20. Southwest quarter of northeast quarter and northwest quarter of southwest quarter and southwest quarter of southwest quarter, section 33, township 9 south, range 2 east, 106.80 acres.

21. Lots A, B, C and D and all S. Ind. B. line, section 35, township 9 south, range 2 east, 353.46 acres.

22. Northeast quarter and southeast quarter of southeast quarter and west half of southeast quarter, section 1, township 10 south, range 2 east, 280.54 acres.

23. South half of southeast quarter and southwest quarter, south of Ind. boundary line, section 3, township 10 south, range 2 east, 237 acres.

24. Northeast and northwest quarter of southeast quarter section 5, township 10 south, range 2 east, 201.81 acres.

25. West half northeast quarter and northwest fractional quarter east of boundary and southwest fractional quarter west of boundary, section 9, township 10 south, range 2 east, 160.70 acres.

26. Southeast quarter of northeast quarter and west half of northeast quarter and east half of northwest quarter and southwest quarter, section 13, township 10 south, range 2 east, 360.40 acres.

27. Northeast quarter and southwest quarter, section 15, township 10 south, range 2 east, 321.02 acres.

28. South half of southwest quarter, section 23, township 10 south, range 2 east, 80.34 acres.

29. West half of section 25, township 10 south, range 2 east, 318.66 acres.

30. East half of northeast quarter, section 27, township 10 south, range 2 east, 79.87 acres.

31. East half section and southwest quarter, section 35, township 10, range 2 east, 472.86 acres.

32. Northeast quarter of southeast quarter, section 1, township 11 south, range 2 east, 40.08 acres.

Total, 8,795.19 acres.

33. Lots A and C of section 19, township 9 south, range 3 east, 106.50 acres.

34. Lots C, D, E and F of section 21, township 9 south, range 3 east, 205.18 acres.

35. East half of section and northwest quarter of section 27, township 9 south, range 3 east, 482.07 acres.

36. All of section 29, township 9 south, range 3 east, 643.44 acres.

37. All of section 31, township 9 south, range 3 east, 641.28 acres.

38. All of section 33, township 9 south, range 3 east, 642.44 acres.

27 39. West half of northeast quarter and southeast quarter, and west half of section 35, township 9 south, range 3 east, 563.29 acres.

40. West half of section 1, township 10 south, range 3 east, 320.20 acres.
 41. All of section 3, township 10 south, range 3 east, 644 acres.
 42. Northeast quarter of northeast quarter, and west half of northeast quarter, and southeast quarter and west half of section 5, township 10 south, range 3 east, 603.60 acres.
 43. All of section 7, township 10 south, range 3 east, 647.36 acres.
 44. All of section 9, township 10 south, range 3 east, 640.88 acres.
 45. Northeast quarter and north half of southeast quarter, and west half of section 11, township 10 south, range 3 east, 562.24 acres.
 46. Northeast quarter and east half of southeast quarter, and west half of section 15, township 10 south, range 3 east, 558.32 acres.
 47. All of section 17, township 10 south, range 3 east, 638.72 acres.
 48. East half section and southwest quarter, section 19, township 10 south, range 3 east, 481.86 acres.
 49. East half of northeast quarter, and southwest quarter of northeast quarter, and south half of southeast quarter, and west half of section 21, township 10 south, range 3 east, 520.98 acres.
 50. Southwest quarter of northeast quarter, and south half of southeast quarter, and west half of section 29, township 10 south, range 3 east, 440 acres.
 51. South half of northeast quarter, and southeast quarter and southeast quarter of northwest quarter, and east half of southwest quarter of section 31, township 10 south, range 3 east, 360 acres.
- Total, 18,497.58 acres.

28

Between the six and fifteen mile limits.

GENERAL LAND OFFICE, *June 23, 1860.*

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to two, inclusive, is a true and correct list of the tracts of land selected by the agent of the State of Alabama, outside of the six and within the fifteen mile limits, under the act of Congress approved 3d of June, 1856, entitled "An act granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State," within the district of lands subject to sale, at Huntsville, Alabama, the said selections being from the lands of the United States, in the alternate sections designated by odd numbers, most contiguous to the tier of sections within six sections in width on each side of the railroad, from the Tennessee River, at or near Gunter's Landing, to Gadsden, on the Coosa River, and known as the Coosa and Tennessee River Railroad, and being in lieu of the land in the alternate sections designated by odd numbers within said six sections in width on each side of said road, which the United States had legally sold, or to which the right of preemption had legally attached, prior to the period to which the rights of the State inured under said grant; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of 3d of June, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[SEAL.]

JOS. S. WILSON, *Commissioner*.

29

DEPARTMENT OF THE INTERIOR,

June 27, 1860.

Approved, subject to the conditions and rights above mentioned.

J. THOMPSON, *Secretary*.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., February 19, 1891.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of lands certified to the State of Alabama June 27, 1860, on account of the grant made by the act of June 3, 1856, to aid in the construction of a road from the Tennessee River, at or near Gunter's Landing, to Gadsden, on the Coosa River, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

LEWIS A. GROFF,

Commissioner of General Land Office.

Coosa and Tennessee River Railroad.

List of lands in the district of lands subject to sale at Centre outside of the six and within the fifteen mile limits of the reserve to satisfy the grant made to the State of Alabama by the act of Congress approved the 3rd of June, 1856, entitled "An act granting public lands in alternate sections to the State of Alabama to aid in the construction of certain railroads in said State, being the lands selected by the agent of the governor of the State of Alabama from the lands of the United States in alternate sections and parts of sections designated by odd numbers, nearest to the tiers of sections within six sections in width

30 on each side of the railroad, from the Tennessee River, at or near

Gunter's Landing, to Gadsden, on the Coosa River, and in lieu of the lands in the alternate sections designated by odd numbers, within said six sections in width, which the United States had legally sold or otherwise appropriated, or to which the rights of preemption have attached."

Approved, June 27, 1860.

South of base line and east of Huntsville, principal meridian Alabama—
Coosa and Tennessee Railroad List. Centre Alabama. Fifteen-mile limits. Act June 3, 1856.

1. Northwest quarter southeast quarter and east half southwest quarter and southwest quarter of section 31, township 8 south, range 3 east, 160.25 acres.

2. Southeast quarter northeast quarter and southeast quarter and northeast quarter northwest quarter and southwest quarter northwest quarter

and northwest quarter southwest quarter of section 5, township 9 south, range 3 east, 320.96 acres.

3. East half southeast quarter and southwest quarter southeast quarter and northeast quarter southwest quarter of section 7, township 9 south, range 3 east, 160.75 acres.

4. West half northeast quarter and southeast quarter and west half of section 9, township 9 south, range 3 east, 561.67 acres.

5. West half northwest quarter and west half southwest quarter of section 15, township 9 south, range 3 east, 160.25 acres.

6. All of section 17, township 9 south, range 3 east, 635.48 acres.

7. Lots A, B, C, and D and north half northwest quarter of section 19, township 9 south, range 3 east, 285.75 acres.

8. East 1/2 half section and east 1/2 half northwest quarter of section 21, township 9 south, range 3 east, 206.50 acres.

9. East half northeast quarter of section 25, township 7 south, range 4 east, 79.88 acres.

31 10. Northeast quarter and northeast quarter southeast quarter and west half southeast quarter and west half of section 1, township 7 south, range 5 east, 600.19 acres.

11. Southeast quarter and southeast quarter southwest quarter and west half southwest quarter of section 9, township 7 south, range 5 east, 280.19 acres.

12. East half northeast quarter and southeast quarter southeast quarter and west half southeast quarter and southeast quarter and northwest quarter and west half northwest quarter and southwest quarter of section 11, township 7 south, range 5 east, 478.29 acres.

13. All of section 13, township 7 south, range 5 east, 636.15 acres.

14. Northeast quarter and northeast quarter southeast quarter and west half southeast quarter and west half of section 15, township 7 south, range 5 east, 602.10 acres.

15. All of section 17, township 7 south, range 5 east, 639.88 acres.

16. All of section 19, township 7 south, range 5 east, 640.32 acres.

17. All of section 21, township 7 south, range 5 east, 637.52 acres.

18. South half northeast quarter and southeast quarter southeast quarter and west half southeast quarter and west half of section 23, township 7 south, range 5 east, 520.17 acres.

19. East half of section and east half of northwest quarter, and northwest quarter northwest quarter, and south half southwest quarter, section 27, township 7 south, range 5 east, 520.69 acres.

20. All of section 29, township 7 , range 5 east, 635.45 acres.

21. Northeast quarter and east half southeast quarter, section 31, township 7 south, range 5 east, 240.49 acres.

22. West half of northeast quarter and north half southeast quarter and west half section 33, township 7 south, range 5 east, 478.50 acres.

32 23. Southeast quarter of northeast quarter and west half northeast quarter and northeast quarter, southeast quarter and west half southeast quarter and west half section 35, township 7 south, range 5 east, 559.56 acres.

24. All of section 3, township 8 south, range 5 east, 639.88 acres.

25. All of section 5, township 8 south, range 5 east, 636.54 acres.

26. Northeast quarter and south half of southeast quarter and southeast quarter of northwest quarter and west half of northwest quarter and south half of southwest quarter, section 9, township 8 south, range 5 east, 439.35 acres.

27. Southeast quarter and northeast quarter, southwest quarter and west half southwest quarter, section 31, township 6 south, range 6 east, 280.51 acres.

28. North half section 5, township 7 south, range 6 east, 320.14 acres.

29. Northeast quarter of northeast quarter and west half of northeast quarter and southeast quarter of southeast quarter and west half of southeast quarter and northwest quarter and southeast quarter of southwest quarter, and west half of southwest quarter, section 7, township 7 south, range 6 east, 520.23 acres.

Total, 12,877.70 acres.

Remark on No. 27:

160.07 acres of northeast quarter relinquished by company April 19, 1886, enclosed in letter from railroad at Huntsville, April 21, 1886, No. 45668, Division F.

33

Between the six and fifteen mile limits.

GENERAL LAND OFFICE, *June 23, 1860.*

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to one inclusive, is a true and correct list of the tract of land selected by the agent of the State of Alabama, outside the six and within the fifteen mile limits, under the act of Congress approved 3rd of June, 1856, entitled "An act granting public lands in alternate sections of the State of Alabama, to aid in the construction of certain railroads in said State," within the district of lands subject to sale at Centre Alabama, the said selections being from the lands of the United States, in the alternate sections designated by odd numbers most contiguous to the tier of sections within six sections in width on each side of the railroad, from the Tennessee River, at or near Gunter's Landing, to Gadsden, on the Coosa River, and known as the Coosa and Tennessee River Railroad, and being in lieu of the lands in alternate sections designated by odd numbers within said six sections in width, on each side of the said road, which the United States had legally sold, or to which the right of preemption had legally attached, prior to the period at which the rights of the State inured under said grant; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of 3rd of June, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first herein above written.

[SEAL]

JOS. S. WILSON, *Commissioner.*

34

DEPARTMENT OF THE INTERIOR,

June 27, 1860.

Approved, subject to the conditions and rights above mentioned.

J. THOMPSON, *Secretary.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 19, 1891.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of lands certified to the State of Alabama, June 27, 1860, on account of the grant made by the act of June 3, 1856, to aid in the construction of a road, from the Tennessee River at or near Gunter's Landing to Gadsden on the Coosa River, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

LEWIS A. GROFF,
Commissioner General Land Office.

Coosa and Tennessee River Railroad.

List of lands in the district of lands subject to sale at Centre, within the six-mile limits, granted to the State of Alabama by the act of Congress, approved the 3d day of June 1856, entitled, "An act granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in alternate sections designated by odd numbers, for six sections in width on each side of the railroad, "from the Tennessee River at or near Gunter's Landing to Gadsden on the Coosa River."

Approved June 27, 1860.

35 South of base line and east of Huntsville principal meridian.
Coosa and Tennessee River Railroad. Act 3d of June, 1856.
Railroad list. Six-mile limits. Centre Alabama.

1. South half northeast quarter and southeast quarter and southeast quarter northwest quarter and east half southwest quarter and southwest quarter southwest quarter, section 13, township 8 south, range 3 east, 400.23 acres.

2. Northeast quarter northwest quarter, section 21, township 8 south, range 3 east, 39.07 acres.

3. Northeast quarter and east half southeast quarter and northwest quarter southeast quarter and southeast quarter northwest quarter, section 23, township 8 south, range 3 east, 318 acres.

4. East half section and northwest quarter and east half and southwest quarter and northwest quarter and southwest quarter, section 25, township 8 south, range 3 east, 610.31 acres.

5. East half and northeast quarter and east half and southeast quarter and southwest quarter and southeast quarter, section 27, township 8 south, range 3 east, 199.71 acres.

6. Southwest quarter northeast quarter and east half southwest quarter and southwest quarter southwest quarter, section 29, township 8 south, range 3 east, 159.54 acres.

7. South half of northeast quarter, section 31, township 8 south, range 3 east, 80.12 acres.

8. North half northeast quarter and south half southeast quarter and east half northwest quarter and southwest quarter northwest quarter and south half southwest quarter, section 33, township 8 south, range 3 east, 358.88 acres.

9. Northeast quarter and southeast quarter southeast quarter and west half southeast quarter and south half northwest quarter and northeast quarter southwest quarter and west half southwest quarter, section 35, township 8 south, range 3 east, 481.56 acres.

10. East half section and east half northwest quarter and *and* southwest quarter northwest quarter and southeast quarter and southwest quarter and west half and southwest quarter, section 1, township 9 south, range 3 east, 561.72 acres.

11. All of section 3, township 9 south, range 3 east, 641.36 acres.

12. Northeast quarter northeast quarter, section 5, township 9 south, range 3 east, 40.12 acres.

13. All of section 11, township 9 south, range 3 east, 644 acres.

14. All of section 23, township 9 south, range 3 east, 627.50 acres.

15. East half northeast quarter and southwest quarter northeast quarter and east half northwest quarter and east half southeast quarter of section 15, township 9 south, range 3 east, 280.44 acres.

16. All of section 23, township 9 south, range 3 east, 316 acres.

17. Southeast quarter southwest quarter of section 23, township 7 south, range 4 east, 40.21 acres.

18. West half northeast quarter and southeast quarter and east half northwest quarter and east half southwest quarter and southwest quarter southwest quarter of section 25, township 7 south, range 4 east, 439.32 acres.

19. South half northeast quarter and southeast quarter and east half southwest quarter and southwest southwest quarter of section 27, township 7 south, range 4 east, 360.40 acres.

20. Southeast quarter southeast quarter west half southeast quarter and east half southwest quarter of section 33, township 7 south, range 4 east, 200.49 acres.

21. East half northeast quarter and northeast quarter southeast quarter and southwest quarter southeast quarter and north half northwest quarter and southeast quarter southwest quarter and west half southwest quarter of section 35, township 7 south, range 4 east, 362.16 acres.

22. Northwest quarter and west half southwest quarter of section 1, township 8 south, range 4 east, 240.24 acres.

23. East half section and northwest quarter and east half southwest quarter of section 3, township 8 south, range 4 east, 560.91 acres.

24. Southeast quarter northeast quarter and west half northeast quarter and southeast quarter northwest quarter of section 5, township 8 south, range 4 east, 160 acres.

25. Northeast quarter and east half northwest quarter and southwest quarter northwest quarter of section 7, township 8 south, range 4 east, 241.85 acres.

26. North half northeast quarter and north half southeast quarter and southeast quarter northwest quarter of section 9, township 8 south, range 4 east, 200.85 acres.

27. East half northeast quarter northwest quarter northeast quarter and southeast quarter southeast quarter and northeast quarter northwest quarter and west half northwest quarter and northeast quarter southwest quarter and west half southwest quarter of section 11, township 8 south, range 4 east, 398.55 acres.

Total, 8,963 acres.

28. East half of northeast quarter and northeast quarter of southeast quarter and northwest quarter of southeast quarter, section 13, township 8 south, range 4 east, 160.02 acres.

29. East half of southeast quarter and southwest quarter of southeast quarter and south half of northwest quarter and southwest quarter, section 17, township 8 south, range 4 east, 359.64 acres.

30. All of section 19, township 8 south, range 4 east, 583 acres.

31. West half of northeast quarter and southeast quarter of southeast quarter and west half of southeast quarter and west half, section 21, township 8 south, range 4 east, 517.47 acres.

32. East half of northeast quarter and northwest quarter of northeast quarter and northeast quarter of northwest quarter and west half of northwest quarter, section 23, township 8 south, range 4 east, 240.57 acres.

33. Southeast quarter of southeast quarter and southwest quarter of northwest quarter and northwest quarter of southwest quarter, section 25, township 8 south, range 4 east, 120.18 acres.

34. Southeast quarter of northeast quarter and west half of northeast quarter and southeast quarter and south half of southwest quarter and north half of northwest quarter, section 27, township 8 south, range 4 east, 439.91 acres.

35. South half of northeast quarter and southeast quarter of southeast quarter and west half of southeast quarter and west half, section 29, township 8 south, range 4 east, 520.72 acres.

36. East half section and north half of northwest quarter and northeast quarter of southwest quarter and southwest quarter of southwest quarter, section 31, township 8 south, range 4 east, 460.28 acres.

37. East half of northeast quarter and southwest quarter of northeast quarter and south half of southwest quarter and west half of northwest quarter, section 33, township 8 south, range 4 east, 522.18 acres.

38. All of section 35, township 8 south, range 4 east, 636.64 acres.

39. All of section 1, township 9 south, range 4 east, 650.80 acres.

40. Southeast quarter of northeast quarter and west half of northeast quarter and southeast quarter and west half, section 3, township 9 south, range 4 east, 600.07 acres.

41. Northeast quarter of northeast quarter and west half of northeast quarter and west half of southeast quarter and west half, section 5, township 9 south, range 4 east, 518.94 acres.

42. All of section 7, township 9 south, range 4 east, 638.48 acres.

43. All of section 9, township 9 south, range 4 east, 640.16 acres.

44. North half section and southeast quarter of southeast quarter and west half of southeast quarter and northeast quarter of southwest quarter, section 11, township 9 south, range 4 east, 479.58 acres.

45. All of section 13, township 9 south, range 4 east, 691.36 acres.

- 39 46. All of section 15, township 9 south, range 4 east, 622.80 acres.
47. All of section 17, township 9 south, range 4 east, 395.80 acres.
48. All of section 23, township 9 south, range 4 east, 401.25 acres.
49. All of section 25, township 9 south, range 4 east, 38.50 acres.
50. West half of southeast quarter and west half section 31, township 7 south, range 5 east, 400.74 acres.
51. All of section 7, township 8 south, range 5 east, 634.64 acres.
52. East half of northeast quarter and northwest quarter of northeast quarter and southeast quarter and east half of northwest quarter, section 17, township 8 south, range 5 east, 359.32 acres.
53. Southeast quarter of northeast quarter and west half of northeast quarter and southeast quarter of southeast quarter and northeast quarter of northwest quarter and west half of northwest quarter and northeast quarter of southwest quarter section 19, township 8 south, range 5 east, 319.66 acres.
54. Northwest quarter of northwest quarter and southwest quarter of southwest quarter, section 21, township 8 south, range 5 east, 79.66 acres.
55. Southeast quarter of northeast quarter and west half of northeast quarter and southeast quarter and northwest quarter and east half of southwest quarter, section 29, township 8 south, range 5 east, 442.41 acres.
56. East half of southeast quarter and northwest quarter of southwest quarter, section 31, township 8 south, range 5 east, 119.79 acres.
- Total, 21,558.11 acres.
57. East half of northeast quarter and northwest quarter of northeast quarter and east half of southeast quarter and southwest quarter of southeast quarter and northwest quarter, section 33, township 8 south, range 5 east, 399.80 acres.
- 40 58. East half section and north half of northwest quarter and east half of southwest quarter and southwest quarter of southwest quarter, section 3, township 9 south, range 5 east, 519.26 acres.
59. West half of northeast quarter and southeast quarter of southeast quarter and northwest quarter of southeast quarter and east half of northwest quarter and south half of southwest quarter, section 5, township 9 south, range 5 east, 319.60 acres.
60. All of section 7, township 9 south, range 5 east, 756.94 acres.
61. Northeast quarter and northeast quarter of southeast quarter and west half of southeast quarter and east half of northwest quarter and southwest quarter of northwest quarter and northeast quarter of southwest quarter, section 9, township 9 south, range 5 east, 438.90 acres.
62. Southwest quarter of northwest quarter and southwest quarter, section 11, township 9 south, range 5 east, 199.77 acres.
63. East half section and east half of northwest quarter and northwest quarter of northwest quarter and southwest quarter, section 15, township 9 south, range 5 east, 600.38 acres.
64. All of section 19, township 9 south, range 5 east, 832.64 acres.
65. East half of northeast quarter and southwest quarter of northeast quarter and southeast quarter and northwest quarter and east half of southwest quarter and west half of southwest quarter, section 21, township 9 south, range 5 east, 557.73 acres.

- 66. All of section 23, township 9 south, range 5 east, 643.48 acres.
- 67. East half of section and southwest quarter, section 25, township 9 south, range 5 east, 479.55 acres.
- 68. East half of northeast quarter and southwest quarter of northeast quarter and southeast quarter and northwest quarter and east half of southwest quarter and northwest quarter of southwest quarter, section 27, township 9 south, range 5 east, 559.89 acres.
- 41 69. All of section 29, township 9 south, range 5 east, 638.48 acres.
- 70. All of section 31, township 9 south, range 5 east, 347.10 acres.
- 71. All of section 33, township 9 south, range 5 east, 560.80 acres.
- 72. South half of northeast quarter and southeast quarter and west half of section 35, township 9 south, range 5 east, 511.20 acres.
- 73. All of section 1, township 10 south, range 5 east, 639.84 acres.
- 74. East half of section and east half of northwest quarter of southwest quarter of northwest quarter and southwest quarter, section 3, township 10 south, range 5 east, 597.64 acres.
- 75. Northeast quarter and east half of southeast quarter and southwest quarter of southeast quarter and west half section 5, township 10 south, range 5 east, 596.61 acres.
- 76. All of section 7, township 10 south, range 5 east, 333.50 acres.
- 77. All of section 9, township 10 south, range 5 east, 638.20 acres.
- 78. East half section and northwest quarter and southeast quarter of southwest quarter and west half of southwest quarter, section 11, township 10 south, range 5 east, 597.38 acres.
- 79. Northwest quarter of northwest quarter, section 13, township 10 south, range 5 east, 39.99 acres.
- 80. All of section 15, township 10 south, range 5 east, 638.68 acres.
Total, 33,705.47 acres.
- 81. All of section 17, township 10 south, range 5 east, 609.08 acres.
- 82. East half section and southwest quarter of northwest quarter and southwest quarter, section 21, township 10 south, range 5 east, 520.49 acres.
- 83. North half of northwest quarter section 23, township 10 south, range 5 east, 79.62 acres.
- 42 84. All of section 29, township 10 south, range 5 east, 625.35 acres.
- 85. Lots 3, 4, and 5, section 33, township 10 south, range 5 east, 120 acres.
- Total area, 35,660.01 acres.

Within the six-mile limits.

GENERAL LAND OFFICE, *23d June, 1869.*

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages 1 to 4 inclusive, is a true and correct list of the tracts of lands within the six-mile limits granted to the State of Alabama by the act of Congress approved 3d of June, 1856, entitled "An act granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State, within the district of lands subject to sale at Centre, Alabama; being the

vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the railroad, from the Tennessee River, at or near Gunter's Landing, to Gadsden, on the Coosa River, and known as the Coosa and Tennessee River Railroad, within the State of Alabama," and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of June 3, 1856, subject to all its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[SEAL.]

JOS. S. WILSON, *Commissioner*.

43

DEPARTMENT OF THE INTERIOR,

June 27, 1860.

Approved, subject to the conditions and rights above mentioned.

J. THOMPSON, *Secretary*.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., February 20, 1891.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of land approved September 12, 1884, to the State of Alabama, under the grant made by the act of Congress of June 3, 1856, within the conflicting limits of the several grants made by said act, is a true and literal exemplification of the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

LEWIS A. GROFF,

Commissioner General Land Office.

List of lands in the district of lands subject to sale at Huntsville, Ala., within the six-mile limits, granted to the State of Alabama, by the act of Congress approved 3d June, 1856, entitled "An act granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State;" being the vacant and unappropriated lands in the alternate sections designated by odd numbers, for six sections in width on each side of the railroad herein named.

EXHIBIT B.—*South of base line and east of Huntsville principal meridian, Alabama—Railroad list.*

Lands within the conflicting six-mile limits of two railroads:
44 namely: the Alabama and Chattanooga, and the Coosa and Tennessee.

Southwest quarter northeast quarter of section 5, township 11, range 6, 39.97 acres.

Northeast quarter southwest quarter of section 1, township 11, range 5, 40 acres.

East half northwest quarter and northwest quarter northwest quarter of section 7, township 10, range 6, 119.25 acres.

Lands within the conflicting six-mile limits of the Alabama and Chattanooga and the Coosa and Chattanooga railroads.

West half southeast quarter and southeast quarter southeast quarter of section 9, township 10, range 7, 120.60 acres.

Northwest quarter northeast quarter of section 15, township 10, range 7, 39.85 acres.

Southeast quarter northwest quarter of section 19, township 10, range 7, 39.98 acres.

Southwest quarter northeast quarter of section 5, township 10, range 8, 40.02 acres.

Southeast quarter southeast quarter of section 11, township 9, range 8, 40.03 acres.

Lands within the conflicting six-mile limits of the Alabama and Chattanooga, and the Coosa and Tennessee railroads.

Selection October 10, 1881.

Northwest quarter southeast quarter north half northwest quarter southwest quarter northwest quarter of section 31, township 11, range 6, 157.18 acres.

Lands within the conflicting six-mile limits of the Alabama and Chattanooga, Coosa and Tennessee, and Coosa and Chattanooga railroads.

Selection January 2, 1882.

Southwest quarter northeast quarter southeast quarter northwest quarter and northwest quarter northwest quarter of section 15, township 11, range 6, 120.51 acres.

45

GENERAL LAND OFFICE, *September 4, 1884.*

I hereby certify that the foregoing list has been compared with the swamp land records of this office and found to be free from conflict.

D. T. PIERCE,
Chief Swamp Land Division.

RAILROAD DIVISION, GENERAL LAND OFFICE,

September 5, 1884.

I hereby certify that the foregoing list of lands has been carefully examined and compared with the records of this office, and found free from conflict and inuring to the State of Alabama under the acts of Congress, approved June 3, 1856, and April 10, 1869, granting lands to said State to aid in the construction of certain railroads therein.

W. J. DRUMMOND,
Chief of Division.

GENERAL LAND OFFICE, *September 10, 1884.*

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the foregoing, on page 1, is a true and correct list of the tracts of land within the six-mile limits, granted to the State of Alabama, by the act of Congress approved June 3, 1856, entitled, "An act granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in the alternate sections designated by

odd numbers for six sections in width on each side of the railroad named in the foregoing, within the State of Alabama, covering 757.39 acres, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said acts of June 3, 1856, and April 10, 1869, subject to all their conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[SEAL.]

N. C. MCFARLAND,
Commissioner.

J. K. McC.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., September 12, 1884.

Approved, subject to the conditions and rights above mentioned.

M. L. JOSLYN,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 19, 1891.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of lands certified to the State of Alabama, June 27, 1860, on account of the grant made by the act of June 3, 1856, to aid in the construction of a road from the Tennessee River, at or near Gunter's Landing, to Gadsden, on the Coosa River, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

LEWIS A. GROFF,
Commissioner of General Land Office.

47

Coosa and Tennessee River Railroad.

List of lands in the district of lands subject to sale at Huntsville, within the six-mile limits, granted to the State of Alabama by the act of Congress, approved 3d June, 1856, entitled "An act granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State, being the vacant and unappropriated lands in the alternate sections designated by odd numbers, for six sections in width on each side of the railroad, from the Tennessee River, at or near Gunter's Landing, to Gadsden, on the Coosa River."

Approved June 27, 1860.

EXHIBIT A.—*South of base line and east of Huntsville principal meridian—Coosa and Tennessee River Railroad, Huntsville. Railroad list.*

Six-mile limits.—Act 3d June, 1856.

1. Lots A, B, C and D, section 23, township 9 south, range 3 east, 188 acres.

2. South half of northeast quarter and southeast quarter and north half of northwest quarter and south half of southwest quarter, section 25, township 9 south, range 3 east, 401.15 acres.

3. East half of northeast quarter, section 35, township 9 south, range 3 east, 80.47 acres.

4. South half of southeast quarter, section 1, township 10 south, range 3 east, 80.05 acres.

Total, 749.67 acres.

Within the six-mile limits.

GENERAL LAND OFFICE, *June 23, 1860.*

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages 1 to 1, inclusive, is a true and correct list of the tracts of land within the six-mile limits, granted

48 to the State of Alabama by the act of Congress approved the 3d of June, 1856, entitled "An act granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State, within the district of lands subject to sale at Huntsville, Ala.; being the vacant and unappropriated lands in the alternate sections designated by the odd numbers for six sections in width on each side of the railroad from the Tennessee River, at or near Gunter's Landing, to Gadsden, on the Coosa River, and known as the Coosa and Tennessee River Railroad," within the State of Alabama; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of June 3, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[SEAL.]

JOS. S. WILSON, *Commissioner.*

DEPARTMENT OF THE INTERIOR,

June 27, 1860.

Approved, subject to the conditions and rights above mentioned.

J. THOMPSON, *Secretary.*

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., February 20, 1891.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of land approved July 26,

49 1884, to the State of Alabama under the grant made by the act of Congress approved June 3, 1856, within the conflicting limits of the several grants made by said act, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[SEAL.]

LOUIS A. GROFF,

Commissioner of General Land Office.

List of lands in the district of lands subject to sale at Huntsville, Alabama, within the six-mile limits, granted to the State of Alabama by the act of Congress approved the 3rd of June, 1856, entitled, "An act granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State, being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the railroads herein named."

EXHIBIT B.—*South of base line and east of Huntsville principal meridian, Alabama—Railroad list.*

Acts June 3, 1856, and April 10, 1869. Huntsville district.

1. Selection January 2, 1882.

Lands within the conflicting six-mile limits of the three railroads, namely: The Alabama and Chattanooga, Coosa and Tennessee, and the Coosa and Chatt'oo-ga.

Northwest quarter and northwest quarter southwest quarter, section 11, township 11 south, range 6 east, 199.44 acres.

North half northeast quarter and southwest quarter northeast quarter and northwest quarter and north half southwest quarter and southwest quarter southwest quarter and south half southeast quarter, section 13, township 11 south, range 6 east, 477.30 acres.

Southeast quarter southeast quarter, section 15, township 11 south, range 6 east, 40.17 acres.

50 Northwest quarter northwest quarter and northeast quarter and southeast quarter northeast quarter and west half southwest quarter and southeast quarter southwest quarter and southeast quarter, section 23, township 11 south, range 6 east, 522.60 acres.

Southeast quarter northeast quarter and west half northeast quarter and southeast quarter northwest quarter and west half northwest quarter and northeast quarter southwest quarter, section 27, township 11 south, range 6 east, 281.02 acres.

Lands within the conflicting six-mile limits of two railroads, namely: Alabama and Chattanooga and the Coosa and Tennessee.

Northeast quarter and north half southeast quarter, section 13, township 12 south, range 4 east, 239.52 acres.

North half section 5, township 12 south, range 5 east, 320.48 acres.

Southwest quarter section 5, township 12 south, range 5 east, 160.24 acres.

North half southeast quarter and southeast quarter southeast quarter, section 5, township 12 south, range 5 east, 120.18 acres.

East half northeast quarter and south half section 7, township 12 south, range 5 east, 401.67 acres.

Southwest quarter northeast quarter and northeast quarter northwest quarter, section 19, township 12 south, range 5 east, 80.39 acres.

Northwest quarter southeast quarter (or lot No. 10), section 7, township 12 south, range 6 east, 39.46 acres.

Lots 3, 4, 5, 6, 11, 12, 14 and 15 of west half section 7, township 12 south, range 6 east, 357.38 acres.

West half southeast quarter and east half southwest quarter and southwest quarter southwest quarter, section 5, township 11 south, range 6 east, 199.88 acres.

East half northeast quarter and southeast quarter southwest quarter and southeast quarter, section 7, township 12 south, range 6 east, 281.07 acres.

Northwest quarter northeast quarter and southwest quarter southeast quarter and northeast quarter southwest quarter and southwest quarter southwest quarter, section 9, township 11 south, range 6 east, 159.60 acres.

51 Southeast quarter and northeast quarter and northwest quarter southeast quarter, section 17, township 11 south, range 6 east, 79.78 acres.

North half northwest quarter, section 19, township 11 south, range 6 east, 78.81 acres.

North half northwest quarter and southwest quarter northwest quarter and north half northeast quarter and south half, section 21, township 11 south, range 6 east, 518.83 acres.

East half northeast quarter and east half northwest quarter and northwest quarter northwest quarter and northwest quarter southwest quarter and east half southeast quarter, section 29, township 11 south, range 6 east, 319.12 acres.

North half southwest quarter, section 31, township 11 south, range 6 east, 78.59 acres.

North half northwest quarter and north half southwest quarter, section 33, township 11 south, range 6 east, 156.49 acres.

Northeast quarter northeast quarter and west half southwest quarter, section 1, township 11 south, range 5 east, 120 acres.

Northeast quarter southwest quarter and west half southwest quarter and north half, section 3, township 11 south, range 5 east, 439.37 acres.

Northeast quarter and northeast quarter southeast quarter and west half southeast quarter and southwest quarter, section 5, township 11 south, range 5 east, 441.43 acres.

West half northeast quarter southwest quarter and south half northwest quarter, section 7, township 11 south, range 5 east, 320.80 acres.

Lots, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20 (east of Line Creek), section 9, township 11 south, range 5 east, 760.91 acres.

Lot C (west of creek), section 9, township 11 south, range 5 east, 27.36 acres.

West half northwest quarter southeast quarter northwest quarter north half southwest quarter southeast quarter southwest quarter east half, section 11, township 11 south, range 5 east, 561.92 acres.

52 Northeast quarter northwest quarter and southeast quarter, section 13, township 11 south, range 5 east, 199.46 acres.

Southeast quarter northeast quarter west half northeast quarter east half southeast quarter and west half, section 15, township 11 south, range 5 east, 517.29 acres.

Lots 4, 5 and 11 (east of creek), section 17, township 11 south, range 5 east, 129.04 acres.

North half southwest quarter north half southeast quarter and southwest quarter southeast quarter, section 19, township 11 south, range 5 east, 601.73 acres.

Northeast quarter northeast quarter (or lot 1) and southwest quarter southeast quarter (or lot 20) and east half southeast quarter (or lots 12 and 21), section 21, township 11 south, range 5 east, 160 acres.

North half northwest quarter and southwest quarter northwest quarter, section 23, township 11 south, range 5 east, 119.35 acres.

North half northwest quarter and southwest quarter northwest quarter northeast quarter southeast quarter and south half southeast quarter, section 25, township 11 south, range 5 east, 239.34 acres.

South half northeast quarter (or lots 10 and 11) and east half northwest quarter (or lots 3 and 9) and northwest quarter southwest quarter (or lot 16), section 27, township 11 south, range 5 east, 380.06 acres.

Southwest quarter of southwest quarter (or lot 18) east half of southwest quarter (or lots 15 and 19) southeast quarter of southeast quarter (or lot 22) south half of northeast quarter of east half of southwest quarter and southeast quarter, section 29, township 11 south, range 5 east, 321.82 acres.

Southwest quarter of northwest quarter, north half of northwest quarter, south half of northeast quarter, east half of southeast quarter and southeast quarter of southwest quarter, section 35, township 11 south, range 5 east, 320.97 acres.

North half of southeast quarter and southeast quarter of southeast quarter, section 13, township 11 south, range 4 east, 119.79 acres.

53 Northeast quarter and northeast quarter of southwest quarter, section 25, township 11 south, range 4 east, 200.32 acres.

Northeast quarter, east half of southeast quarter and south half of southwest quarter, section 7, township 10 south, range 6 east, 318.01 acres.

Northwest quarter of northwest quarter of northeast quarter of southeast quarter of northeast quarter, east half of southeast quarter and northwest quarter of southwest quarter, section 19, township 10 south, range 6 east, 360.22 acres.

West half section 29, township 10 south, range 6 east, 320.40 acres.

All of section 31, township 10 south, range 6 east, 639.36 acres.

East half section, southwest quarter, east half of northwest quarter and southwest quarter of northwest quarter, section 13, township 10 south, range 5 east, 599.82 acres.

East half, south half of northwest quarter and southwest quarter, section 23, township 11 south, range 5 east, 557.18 acres.

Northwest quarter and northwest quarter of northeast quarter, section 25, township 10 south, range 5 east, 200 acres.

South half of northeast quarter of southeast quarter and west half section 27, township 10 south, range 5 east, 558.56 acres.

East half of southeast quarter of northwest quarter (or lot 7) north half of southwest quarter (or lot 3 and range 4) southeast quarter of southwest quarter (or lot 19) section 33, township 10 south, range 5 east, 480 acres.

West half of northeast quarter northwest quarter north half of southwest quarter, southwest quarter of southwest quarter and northeast quarter of southeast quarter, section 35, township 10 south, range 5 east, 398.70 acres.

Lands within the conflicting limit of six miles of the Alabama & Chattanooga, and the Coosa and Chattooga railroads:

54 Northeast quarter of southeast quarter, west half of southeast quarter and southwest quarter, section 25, township 11 south, range 6 east, 278.54 acres.

East half section 35, township 11 south, range 6 east, 312.90 acres.

East half of northwest quarter and southwest quarter of northwest quarter, section 3, township 11 south, range 7 east, 120.35 acres.

North half of southwest quarter, north half of southeast quarter and southwest quarter of southeast quarter, section 5, township 11 south, range 7 east, 599.52 acres.

North half, north half of southwest quarter and northwest quarter of southeast quarter, section 7, township 11 south, range 7 east, 439.09 acres.

North half of northwest quarter and southwest quarter, northwest quarter, section 17, township 11 south, range 7 east, 120.21 acres.

Northwest quarter of northeast quarter, section 13, township 10 south, range 6 east, 40.12 acres.

West half of northeast quarter, section 23, township 10 south, range 6 east, 80 acres.

Southeast quarter of northwest quarter, southwest quarter of northeast quarter, east half of northeast quarter and south half, section 25, township 10 south, range 6 east, 481.36 acres.

Northeast quarter of southwest quarter, section 27, township 10 south, range 6 east, 40.10 acres.

East half of northeast quarter, southwest quarter of northeast quarter, northwest quarter of southeast quarter and south half of southeast quarter, section 35, township 10 south, range 6 east, 240.45 acres.

Southeast quarter of northeast quarter, section 1, township 10 south, range 7 east, 39.95 acres.

Northeast quarter and south half, section 3, township 10 south, range 7 east, 481.38 acres.

Northeast quarter of northwest quarter, northeast quarter and east half of southwest quarter, section 9, township 10 south, range 7 east, 281.40 acres.

55 Southeast quarter of northeast quarter and southeast quarter of southwest quarter, section 11, township 10 south, range 7 east, 79.94 acres.

North half of northwest quarter, southeast quarter of northwest quarter, northeast quarter and south half, section 13, township 10 south, range 7 east, 600.38 acres.

West half of northwest quarter and southwest quarter section 15, township 10 south, range 7 east, 239.10 acres.

West half of southeast quarter and east half of southwest quarter, section 17, township 10 south, range 7 east, 160.46.

Northeast quarter of northeast quarter, north half of southwest quarter, east half of southeast quarter, and southwest quarter of southeast quarter, section 19, township 10 south, range 7 east, 239.92 acres.

Southwest quarter of northwest quarter and northwest quarter of southeast quarter, section 21, township 10 south, range 7 east, 80 acres.

All of section 23, township 10 south, range 7 east, 642.40 acres.

All of section 27, township 10 south, range 7 east, 642.16 acres.

Northeast quarter of southeast quarter and west half of southwest quarter, section 29, township 10 south, range 7 east, 120.57 acres.

Northeast quarter, east half of southeast quarter, north half of northwest quarter, southeast quarter of northwest quarter and southeast quarter of southwest quarter, section 31, township 10 south, range 7 east, 401.35.

All of section 33, township 10 south, range 7 east, 643.12 acres.

Northwest quarter of northwest quarter, section 3, township 10 south, range 8 east, 40 acres.

Northeast quarter of northeast quarter, southeast quarter of northeast quarter, east half of northwest quarter, southwest quarter of northwest quarter, and south half, section 5, township 10 south, range 8 east, 520.33 acres.

Northeast quarter of northwest quarter, south half of northwest quarter, northeast quarter, and south half, section 7, township 10 south, range 8 east, 603.30 acres.

56 Northwest quarter of northeast quarter, north half of northwest quarter and southwest quarter and northwest quarter, section 9, township 10 south, range 8 east, 160.40 acres.

Southeast quarter of northwest quarter and northwest quarter of northwest quarter, section 17, township 10 south, range 8 east, 80.08 acres.

North half and northeast quarter of southeast quarter and west half of southeast quarter and southwest quarter, section 25, township 9 south, range 7 east, 600.30 acres.

All of section 35, township 9 south, range 8 east, 640 acres.

East half and east half of southwest quarter, section 1, township 9 south, range 8 east, 400.35 acres.

Southwest quarter and southwest quarter southeast quarter, section 9, township 9 south, range 8 east, 199.90 acres.

Northeast quarter and northeast quarter of southeast quarter, and west half of southeast quarter and west half, section 11, township 9 south, range 8 east, 600.37 acres.

Southeast quarter of northeast quarter and west half of northeast quarter and west half, section 13, township 9 south, range 8 east, 440 acres.

Northeast quarter and northeast quarter of northwest quarter and west half of northwest quarter and southwest quarter, section 15, township 9 south, range 8 east, 440 acres.

East half of northeast quarter and southwest quarter of northeast quarter and north half of southeast quarter and east half of southwest quarter, section 17, township 9 south, range 8 east, 280 acres.

East half of southeast quarter and northeast quarter of southwest quarter, section 19, township 9 south, range 8 east, 119.94 acres.

Southwest quarter of southwest quarter, section 21, township 9 south, range 8 east, 39.80 acres.

East half and west half of southwest quarter, section 23, township 9 south, range 8 east, 397.90 acres.

Northeast quarter and north half of northwest quarter and north half of southeast quarter, section 27, township 9 south, range 8 east, 319.20 acres.

57 East half of northeast quarter and southwest quarter of northeast quarter and northwest quarter of northwest quarter and south

half of northwest quarter and west half of southeast quarter and southwest quarter, section 29, township 9 south, range 8 east, 478.80 acres.

Northwest quarter and northeast quarter of northwest quarter and east half of southwest quarter, section 31, township 9 south, range 8 east, 280.21 acres.

West half of northwest quarter and southeast quarter of southeast quarter and west half of southeast quarter and southwest quarter, section 33, township 9 south, range 8 east, 360.99 acres.

Northwest quarter and northwest quarter of southwest quarter, section 5, township 9 south, range 9 east, 199.50 acres.

North half of section 7, township 9 south, range 9 east, 319.06 acres.

Lands within the conflicting six-mile limits of the Alabama & Chattanooga and the Coosa & Tennessee railroads:

Selected October 10, 1881.

West half of northeast quarter, section 31, township 11 south, range 6 east, 78.59 acres.

Selection April 25, 1883.

Southeast quarter of section 15, township 12 south, range 5 east, 160.60 acres.

Lands within the conflicting six-mile limits of the Alabama and Chattanooga and the Selma, Rome and Dalton railroads.

Selection April 25, 1883.

South half southwest quarter, section 11, township 12 south, range 6 east, 79 acres.

South half southeast quarter, section 11, township 12 south, range 6 east, 79 acres.

Total 30,847.62 acres.

58

GENERAL LAND OFFICE, *July 23, 1884.*

I hereby certify that the foregoing list has been compared with the swamp land records of this office, and found to be free from conflict.

D. T. PIERCE,
Chief Swamp Land Division.

GENERAL LAND OFFICE, RAILROAD DIVISION,
July 25, 1884.

I hereby certify that the foregoing list of lands has been carefully examined and compared with the records of this office, found free from conflict and inuring to the State of Alabama under the acts of Congress of June 3, 1856, and April 10, 1869, to aid in the construction of certain railroads in said State.

W. J. DRUMMOND,
Chief of Railroad Division.

GENERAL LAND OFFICE, *July 26, 1884.*

I, L. Harrison, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages 1 to 6, inclusive, is a true and correct list of the tracts of land within the six-mile limits granted to the

State of Alabama by the act of Congress approved June 3, 1856, entitled "An act granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the railroads named in the foregoing, within the State of Alabama, covering 30,847.62 acres, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said acts of June 3, 1856, and April 10, 1869, subject to all its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[SEAL.]

L. HARRISON,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington City, D. C., 26 July, 1884.

Approved, subject to the conditions and rights above mentioned.

M. L. JOSLYN,
Acting Secretary.

(Endorsed:) Filed October 31, 1891. N. W. Trimble, clerk.

EXHIBITS D AND E.

THE STATE OF ALABAMA, ETOWAH COUNTY.

Know all men by these presents that the Tennessee and Coosa Railroad Company, for and in consideration for the sum of twenty-one thousand seven hundred and 90-100 dollars to it in hand paid by Hugh Carlisle, the receipt whereof is hereby acknowledged, does hereby grant, quitclaim, and release to said Hugh Carlisle, his heirs and assigns, all the right, title, and interest of the Tennessee and Coosa Railroad Company, without warranty, in and to the following-described lands lying in Etowah County, Alabama, to wit:

East half and southwest quarter and east half of northwest quarter and southwest quarter northwest quarter, section 13, township 10, range 5, 599.82 acres.

60 East half and south half northwest quarter and southwest quarter, section 23, township 10, range 5, 557.18 acres.

Northwest quarter and northwest quarter northeast quarter, section 25, township 10, range 5, 200 acres.

South half of northeast quarter and southeast quarter and west half, section 27, township 10, range 5, 558.56 acres.

East half and southeast quarter northwest quarter (or lot 7) and north half southwest quarter (or lots 3 and 4) and southeast quarter southwest quarter (or lot 19), section 33, township 10, range 5, 480 acres.

West half northeast quarter and northwest quarter and north half southwest quarter and southwest quarter southwest quarter and northeast quarter southeast quarter, section 35, township 10, range 5, 398.70 acres.

Total, 2,794.26 acres.

East half northwest quarter and northwest quarter northwest quarter, section 7, township 10, range 6, 119.25 acres.

Northeast quarter east half southeast quarter and south half southwest quarter, section 7, township 10, range 6, 318.01 acres.

Northwest quarter southwest quarter, section 17, township 10, range 6, 40.10 acres.

Southwest quarter southeast quarter, section 19, township 10, range 5, 40.03 acres.

Northwest quarter and northwest quarter northeast quarter and southeast quarter northeast quarter, section 19, township 10, range 6, 360.22 acres.

East half southeast quarter and northwest quarter southwest quarter west half, section 29, township 10, range 6, 320.40 acres.

Sold to William Dickson south half southwest quarter, all section 31, township 10, range 6, 639.36 acres.

Total, 1,837.37 acres.

North half southeast quarter and southeast quarter southeast quarter, section 13, township 11, range 4, 119.79 acres.

Northeast quarter and northeast quarter southwest quarter, section 25, township 11, range 4, 200.32 acres.

Total, 320.11 acres.

61 Northeast quarter southwest quarter, section 1, township 11, range 5, 40 acres.

Northeast quarter northeast quarter and west half southwest quarter, section 1, township 11, range 5, 120 acres.

Northeast quarter southeast quarter, section 1, township 11, range 5, 40 acres.

Northeast quarter southwest quarter and west half southwest quarter and north half section 3, township 11, range 5, 439.37 acres.

Northeast quarter and northeast quarter southeast quarter and west half southeast quarter and southwest quarter, section 5, township 11, range 5, 441.43 acres.

West half northeast quarter and southwest quarter and south half northwest quarter, section 7, township 11, range 5, 320.80 acres.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, east of Line Creek, section 9, township 11, range 5, 760.91 acres.

Total 2162.51 acres.

Lot E, west of creek, section 9, township 11, range 5, 27.36 acres.

West half northwest quarter and southeast quarter northwest quarter north half southwest quarter and southeast quarter southwest quarter and east half, section 11, township 11, range 5, 561.92 acres.

Northeast quarter northwest quarter and southeast quarter, section 13, township 11, range 5, 199.46 acres.

Southeast quarter northeast quarter, section 13, township 11, range 5, 39.89

Southeast quarter of northeast quarter and west half of northeast quarter, east half of southeast quarter and west half section 15, township 11, range 5, 517.29 acres.

Sold to James McClendon south half of northeast quarter and southeast quarter of southeast quarter.

Sold McClendon and Hammet northeast quarter of southeast quarter, lots 4, 5 and 11, east of creek, section 17, township 11, range 5, 129.04 acres.

62 North half and southwest quarter, north half of southeast quarter of southwest quarter of southeast quarter, section 19, township 11, range 5, 601.73 acres.

Northeast quarter of northeast quarter (or lot 1) southwest quarter of southeast quarter (or lot 2), east half of southeast quarter (or lots 12 and 21) section 21, township 11, range 5, 160 acres.

North half of northwest quarter and southwest quarter of northwest quarter, section 23, township 11, range 5, 119.35 acres.

North half northwest quarter and southwest quarter northwest quarter northeast quarter southeast quarter and south half southeast quarter, section 25, township 11, range 5, 239.34 acres.

Northwest quarter northeast quarter (or lot 2) section 27, township 11, range 5, 40 acres.

South half northeast quarter (or lots 10 and 11) east half northwest quarter (or lots 3 and 9) northwest quarter southwest quarter (or lot 16) southwest quarter southwest quarter (or lot 18) east half southwest quarter (or lots 15 and 19) southeast quarter southeast quarter (or lot 22) section 29, township 11, range 5, 380.01 acres.

South half northeast quarter and east half southwest quarter, and southeast quarter, section 29, township 11, range 5, 321.82 acres.

Southwest quarter northwest quarter and north half northwest quarter and south half northeast quarter, east half southeast quarter and southeast quarter southwest quarter, section 35, township 11, range 5, 320.97 acres.

Total 3,658.23 acres.

Sold to M. McPhillips southeast quarter southwest quarter southwest quarter northwest quarter.

Southwest quarter of northeast quarter, section 5, township 11, range 6, 39.97 acres.

West half of southeast quarter and east half southwest quarter southwest quarter southwest quarter, section 5, township 11, range 6, 199.88 acres.

63 Sold to Christopher and Stewart and Peoples Bros. east half of northeast quarter and southwest quarter of northeast quarter and north half of southeast quarter and southwest quarter of southeast quarter and south half of southwest quarter and northeast quarter southwest quarter, and east half northeast quarter and southeast quarter southwest quarter and southeast quarter section 7, township 11, range 6, 281.07 acres.

Sold to P. W. Bern east half northeast quarter and southeast quarter southwest quarter and northwest quarter northeast quarter and southwest quarter southeast quarter and northeast quarter southwest quarter and southwest quarter southwest quarter, section 9, township 11, range 6, 159.60 acres.

Sold to W. G. Whitehead northeast quarter southeast quarter and northwest quarter and northwest quarter southwest quarter, section 11, township 11, range 6, 199.44 acres.

North half northeast quarter and southwest quarter northeast quarter and northwest quarter and north half southwest quarter and south half southeast quarter, section 13, township 11, range 6, 447.30 acres.

Southwest quarter northeast quarter and southeast quarter northwest quarter and northwest quarter northwest quarter, section 15, township 11, range 6, 120.51 acres.

Southeast quarter southeast quarter, section 15, township 11, range 6, 40.17 acres.

Southeast quarter northeast quarter northwest quarter southeast quarter, section 17, township 11, range 6, 79.78 acres.

West half northwest quarter section 19, township 11, range 6, 78.81 acres.

West half northwest quarter southwest quarter northwest quarter west half northeast quarter and south half, section 21, township 11, range 6, 518.83 acres.

Sold to Sam F. Forman north half southwest quarter southeast quarter southwest quarter.

Sold to Georgia Frazier southwest quarter southwest quarter.

Sold to Herburg, Simpson & Co. east half northeast quarter.

64 Northwest quarter northwest quarter northeast quarter southeast quarter northeast quarter west half southwest quarter southeast quarter southwest quarter and southeast quarter, section 23, township 11, range 6, 522.60 acres.

West half northeast quarter southeast quarter northeast quarter southeast quarter northwest quarter west half northwest quarter northeast quarter southwest quarter, section 27, township 11, range 6, 281.02 acres.

Sold to N. M. Thornton southwest quarter northeast quarter.

East half northeast quarter east half northwest quarter northwest quarter northwest quarter northwest quarter southwest quarter and east half southeast quarter, section 29, township 11, range 6, 319.12 acres.

Sold to J. R. Hughes southeast quarter southeast quarter.

Austin Langford southwest quarter southwest quarter.

Jack Letson southeast quarter northwest quarter.

J. H. Sitz north half northwest quarter.

Northwest quarter southeast quarter north half northwest quarter and southwest quarter northwest quarter, section 31, township 11, range 6, 157.18 acres.

Total, 3,445.28 acres.

North half southwest quarter, section 31, township 11, range 6, 78.59 acres.

West half northeast quarter, section 31, township 11, range 6, 78.59 acres.

North half northwest quarter and north half southwest quarter, section 33, township 11, range 6, 156.49 acres.

Sold to N. W. Thornton, north half southwest quarter.

Total, 313.67 acres.

Northeast quarter and north half southeast quarter, section 13, township 12, range 4, 239.52 acres.

North half section 5, township 12, range 5, 320.48 acres.

Southwest quarter section 5, township 12, range 5, 160.24 acres.

North half southeast quarter and southeast quarter southeast quarter, section 5, township 12, range 5, 120.18 acres.

East half northeast quarter and south half, section 7, township 12, range 5, 401.67 acres.

65 Sold to S. A. Henry & Co., northeast quarter southwest quarter southeast quarter section 15, township 12, range 5, 160 acres.

Southwest quarter northeast quarter and northeast quarter northwest quarter section 19, township 12, range 5, 80.39 acres.

Total, 1,242.96 acres.

Northwest quarter southeast quarter (or lot 10) section 7, township 12, range 6, 39.46 acres.

Lots 3, 4, 5, 6, 11, 12, 14, and 15 of west half section 7, township 12, range 6, 357.38 acres.

Sold to W. J. Sibert, lot 4 in northwest corner.

Sold to G. W. Conway, northeast quarter northwest quarter (or lot 3).

Northeast quarter southeast quarter section 9, township 12, range 6, 39.90 acres.

Southwest quarter southeast quarter section 15, township 12, range 6, 40 acres.

Total, 476.74 acres.

Southeast quarter southeast quarter, section 17, township 12, range 6, 39.89 acres.

Southeast quarter northeast quarter, section 21, township 12, range 6, 39.90 acres.

Southwest quarter northeast quarter, section 29, township 12, range 6, 39.89.

Total, 119.68 acres.

RECAPITULATION.

Township 10, range 5, 2,794.26 acres.

Township 10, range 6, 1,837.37 acres.

Township 11, range 4, 320.11 acres.

Township 11, range 5, 5,820.74 acres.

Township 11, range 6, 3,758.95 acres.

Township 12, range 4, 239.52 acres.

Township 12, range 5, 1,242.96 acres.

Township 12, range 6, 596.42 acres.

Total, 16,610.33 acres.

66 Southeast quarter, section 1, township 12, range 5, 160 acres.
North half southwest quarter, section 1, township 12, range 5, 80 acres.

Southeast quarter southwest quarter, section 1, township 12, range 5, 40 acres.

Southeast quarter northwest quarter, section 1, township 12, range 5, 40 acres.

Southwest quarter northeast quarter, section 1, township 12, range 5, 40 acres.

East half southeast quarter, section 5, township 12, range 6, 80 acres.

Southeast quarter northeast quarter, section 5, township 12, range 6, 40 acres.

West half northwest quarter and southwest quarter northwest quarter, section 35, township 12, range 5, 120 acres.

Southeast quarter southwest quarter, section 35, township 12, range 5, 40 acres.

South half northeast quarter and west half southeast quarter, section 35, township 12, range 5, 160 acres.

Total, 17,410.33 acres.

And whereas at a meeting of the directors of said Tennessee & Coosa Railroad Company, at the office of said company, in Guntersville, on Monday, the 7th day of March, 1887, a resolution was passed authorizing the president of said Tennessee & Coosa Railroad Company, in consideration of the premises above mentioned, to execute a quitclaim title to all the right, title, and interest of the Tennessee & Coosa Railroad Company in and to the above-described lands to the said Hugh Carlisle, his heirs and assigns, for the consideration named.

In testimony whereof the Tennessee & Coosa Railroad Company, by its president, has, on the 4th day of April, 1887, caused its name to be signed and its seal affixed to this instrument.

[SEAL.] THE TENNESSEE & COOSA RAILROAD COMPANY,
By its president, LOUIS WYETH.

S. K. RAYBURN, *Secretary*.

67 G. BEGGS,
HENRY L. MILLER.

THE STATE OF ALABAMA, COUNTY OF MARSHALL.

I, John D. Taylor, a notary public in and for the said county and State, do hereby certify that Louis Wyeth, the president of the the Tennessee and Coosa Railroad Company, and S. K. Rayburn, the secretary of said railroad company, whose names are signed to the foregoing conveyance, and who are known to me, and who are known to me to be, respectively, the president and secretary of said railroad company, acknowledged before me on this day that, being informed of the contents of the conveyance, they executed the same on the day the same bears date.

Given under my hand and seal this the 4th day of April, 1887.

[SEAL.] JOHN D. TAYLOR,
Notary Public.

Filed in office and recorded April 6, 1887.

L. E. HAMLIN,
Judge of Probate.

THE STATE OF ALABAMA, ETOWAH COUNTY.

I, J. A. Tallman, judge of probate in and for said county and State, hereby certify that the foregoing pages, from 1 to 8, inclusive, contain a full, complete, and exact copy of a conveyance made by the Tennessee and Coosa Railroad Company to Hugh Carlisle, as appears on deed book L, pages 586 to 589, on file in this office.

Given under my hand and official seal of said court, at office in Gadsden, this the 19th day of November, A. D. 1890.

[SEAL.] J. A. TALLMAN,
Judge of Probate.

THE STATE OF ALABAMA, MARSHALL COUNTY.

Know all men by these presents, that the Tennessee and Coosa Railroad Company, for and in consideration of the sum of fifty-nine thousand three hundred and forty-eight and 75-100 dollars to it in hand paid by Hugh Carlisle, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, and convey to said Hugh Carlisle, his heirs and assigns, the following-described lands lying in Marshall County, Alabama, to wit:

Line 5, south half southeast quarter, section 23, township 8, range 2, 80 acres.

Line 6, west half northeast quarter, section 27, township 8, range 2, 80 acres.

Line 6, east half northwest quarter, section 27, township 8, range 2, 80 acres.

Line 6, southwest quarter northwest quarter, section 27, township 8, range 2, 40 acres.

Line 6, southwest quarter, section 27, township 8, range 2, 160 acres.

Line 6, west half of southeast quarter, section 27, township 8, range 2, 80 acres.

Line 6, northeast quarter southeast quarter, section 27, township 8, range 2, 40 acres.

Total, 560 acres.

Line 7, south half northeast quarter, section 13, township 8, range 3, 80 acres.

Line 7, southeast quarter northwest quarter, section 13, township 8, range 3, 40 acres.

Line 7, southeast quarter, section 13, township 8, range 3, 160 acres.

Line 7, east half of southwest quarter, section 13, township 8, range 3, 80 acres.

Line 7, southwest quarter southwest quarter, section 13, township 8, range 3, 40 acres.

Line 2, northeast quarter northwest quarter, section 21, township 8, range 3, 40 acres.

Line 3, north half northeast quarter, section 23, township 8, range 3, 80 acres.

Line 3, southeast quarter northwest quarter, section 23, township 8, range 3, 40 acres.

Line 3, north half of southeast quarter, section 23, township 8, range 3, 80 acres.

Total 640 acres.

Line 3, southeast quarter southeast quarter, section 23, township 8, range 3, 40 acres.

Line 4, northwest quarter section 25, township 8, range 3, 160 acres.

Line 4, northwest quarter northeast quarter, section 25, township 8, range 3, 40 acres.

Line 4, south half northeast quarter, section 25, township 8, range 3, 80 acres.

Line 4, north half southwest quarter, section 25, township 8, range 3, 80 acres.

Line 4, southeast quarter southwest quarter, section 25, township 8, range 3, 40 acres.

Line 4, north half southeast quarter, section 25, township 8, range 3, 80 acres.

Line 5, southeast quarter northeast quarter, section 27, township 8, range 3, 40 acres.

Line 5, east half southeast quarter, section 27, township 8, range 3, 80 acres.

Line 5, southwest quarter southeast quarter, section 27, township 8, range 3, 40 acres.

Line 6, northeast quarter southwest quarter, section 29, township 8, range 3, 40 acres.

Line 6, south half southwest quarter, section 29, township 8, range 3, 80 acres.

Line 7, south half northeast quarter, section 31, township 8, range 3, 80 acres.

Line 1, northeast quarter southwest quarter, section 31, township 8, range 3, 40 acres.

Line 1, south half southwest quarter, section 31 township 8, range 3, 80 acres.

Line 1, northwest quarter southeast quarter, section 31, township 8, range 3, 40 acres.

Line 8, northeast quarter northwest quarter, section 33, township 8, range 3, 40 acres.

70 Line 8, south half northwest quarter, section 33, township 8, range 3, 80 acres.

Line 8, north half northeast quarter, section 33, township 8, range 3, 80 acres.

Line 8, south half southwest quarter, section 33, township 8, range 3, 80 acres.

Line 6, southwest quarter northeast quarter, section 29, township 8, range 3, 40 acres.

Line 8, south half southeast quarter, section 33, township 8, range 3, 80 acres.

Line 9, south half northwest quarter, section 35, township 8, range 3, 80 acres.

Line 9, east half northeast quarter, section 35, township 8, range 3, 80 acres.

Line 9, southwest quarter northeast quarter, section 35, township 8, range 3, 40 acres.

Line —, west half southeast quarter, section 35, township 8, range 3, 80 acres.

Line 9, southeast quarter southeast quarter, section 35, township 8, range 3, 40 acres.

Line 9, west half southwest quarter, section 35, township 8, range 3, 80 acres.

Line 9, northeast quarter southwest quarter, section 35, township 8, range 3, 40 acres.

Total 2,580 acres.

Line 22, northwest quarter, section 1, township 8, range 4, 160 acres.

Line 22, west half southwest quarter, section 1, township 8, range 4, 80 acres.

Line 23, north half, section 3, township 8, range 4, 320 acres.

- Line 23, southeast quarter, section 3, township 8, range 4, 160 acres.
Line 23, east half southwest quarter, section 3, township 8, range 4, 80 acres.
Line 24, northwest quarter northeast quarter, section 5, township 8, range 4, 40 acres.
Line 24, south half northeast quarter, section 5, township 8, range 4, 80 acres.
71 Line 25, northeast quarter northwest quarter, section 7, township 8, range 4, 40 acres.
Line 25, southwest quarter northwest quarter, section 7, township 8, range 4, 40 acres.
Line 25, north half northeast quarter, section 7, township 8, range 4, 160 acres.
Line 26, southeast quarter northwest quarter, section 9, township 8, range 4, 40 acres.
Line 26, north half northeast quarter, section 9, township 8, range 4, 80 acres.
Line 26, north half southeast quarter, section 9, township 8, range 4, 80 acres.
Line 27, north half northwest quarter, section 11, township 8, range 4, 80 acres.
Line 27, half southwest quarter northwest quarter, section 11, township 8, range 4, 20 acres.
Line 27, north half northeast quarter, section 11, township 8, range 4, 80 acres.
Line 27, southeast quarter northeast quarter, section 11, township 8, range 4, 40 acres.
Line 27, southeast quarter southeast quarter, section 11, township 8, range 4, 40 acres.
Line 29, south half northwest quarter, section 17, township 8, range 4, 80 acres.
Line 29, southwest quarter, section 17, township 8, range 4, 160 acres.
Line 29, east half southeast quarter, section 17, township 8, range 4, 80 acres.
Line 29, southwest quarter southeast quarter, section 17, township 8, range 4, 40 acres.
Line 30, north half section 19, township 8, range 4, 320 acres.
Line 30, north half southwest quarter, section 19, township 8, range 4, 80 acres.
Line 30, north half southeast quarter, section 19, township 8, range 4, 80 acres.
Line 30, southeast quarter southeast quarter, section 19, township 8, range 4, 40 acres.
72 Line 31, west half section 21, township 8, range 4, 320 acres.
Line 31, west half northeast quarter, section 21, township 8, range 4, 80 acres.
Line 31, west half southeast quarter, section 21, township 8, range 4, 40 acres.
Line 32, north half northwest quarter, section 23, township 8, range 4, 80 acres.
Line 32, southwest quarter northwest quarter, section 23, township 8, range 4, 40 acres.

Line 32, north half northeast quarter, section 23, township 8, range 4, 80 acres.

Line 32, southeast quarter northeast quarter, section 23, township 8, range 4, 40 acres.

Line 33, southwest quarter northwest quarter, section 25, township 8, range 4, 40 acres.

Line 33, northwest quarter southwest quarter, section 25, township 8, range 4, 40 acres.

Line 33, southeast quarter southeast quarter, section 25, township 8, range 4, 40 acres.

Line 34, north half northwest quarter, section 27, township 8, range 4, 80 acres.

Line 34, west half northeast quarter, section 27, township 8, range 4, 80 acres.

Line 34, southeast quarter northeast quarter, section 27, township 8, range 4, 40 acres.

Line 34, southeast quarter, section 27, township 8, range 4, 160 acres.

Line 34, south half southwest quarter, section 27, township 8, range 4, 80 acres.

Line 35, northwest quarter, section 29, township 8, range 4, 160 acres.

Line 35, south half northeast quarter, section 29, township 8, range 4, 80 acres.

Line 35, southwest quarter, section 29, township 8, range 4, 160 acres.

Line 35, west half southeast quarter, section 29, township 8, range 4, 80 acres.

Line 35, southeast quarter southeast quarter, section 29, township 8, range 4, 40 acres.

73 Line 36, north half northwest quarter, section 31, township 8, range 4, 80 acres.

Line 36, northeast quarter, section 31, township 8, range 4, 160 acres.

Line 36, northeast quarter southwest quarter, section 31, township 8, range 4, 40 acres.

Line 36, southwest quarter southwest quarter, section 31, township 8, range 4, 40 acres.

Line 36, southeast quarter, section 31, township 8, range 4, 160 acres.

Line 37, west half northwest quarter, section 33, township 8, range 4, 80 acres.

Line 37, east half northeast quarter, section 33, township 8, range 4, 80 acres.

Line 37, southwest quarter northeast quarter, section 33, township 8, range 4, 40 acres.

Line 38, south half, section 35, township 8, range 4, 320 acres.

Total, 7,840 acres.

Line 1, northwest quarter southeast quarter, section 1, township 9, range 2, 40 acres.

Line 1, east half northeast quarter, section 11, township 9, range 2, 80 acres.

Line 1, east half southeast quarter, section 11, township 9, range 2, 80 acres.

Line 3, northeast quarter southeast quarter, section 13, township 9, range 2, 40 acres.

Line 3, southwest quarter southeast quarter, section 13, township 9, range 2, 40 acres.

Line 17, north half northwest quarter, section 23, township 9, range 2, 80 acres.

Line 18, north half northwest quarter, section 25, township 9, range 2, 80 acres.

Line 18, west half southwest quarter, section 25, township 9, range 2, 80 acres.

Line 18, lot C, section 25, township 9, range 2, 55 acres.

Line 19, east half northwest quarter, section 27, township 9, range 2, 80 acres.

74 Line 19, northwest quarter northeast quarter, section 27, township 9, range 2, 40 acres.

Line 19, west half southwest quarter, section 27, township 9, range 2, 80 acres.

Line 21, lot D, section 35, township 9, range 2, 46 acres.

Line 21, lot C, section 35, township 9, range 2, 41 acres.

Line 21, lot B, section 35, township 9, range 2, 28 acres.

Line 21, southeast half southwest quarter, section 35, township 9, range 2, 66.55 acres.

Line 21, northwest quarter southeast quarter, section 35, township 9, range 2, 32.81 acres.

Line 21, southwest quarter southeast quarter, section 35, township 9, range 2, 40 acres.

Total, 8,869.30 acres.

Line 10, northwest quarter southwest quarter, section 1, township 9, range 3, 40 acres.

Line 10, south half southwest quarter, section 1, township 9, range 3, 80 acres.

Line 11, all of section 3, township 9, range 3, 640 acres.

Line 2, southwest quarter northwest quarter, section 5, township 9, range 3, 40 acres.

Line 12, east half northeast quarter, section 5, township 9, range 3, 80 acres.

Line 2, northwest quarter southwest quarter, section 5, township 9, range 3, 40 acres.

Line 2, southeast quarter section 5, township 9, range 3, 160 acres.

Line 3, northeast quarter southwest quarter, section 7, township 9, range 3, 40 acres.

Line 3, east half southeast quarter, section 7, township 9, range 3, 80 acres.

Line 3, southwest quarter southeast quarter, section 7, township 9, range 3, 40 acres.

Line 4, west half section 9, township 9, range 3, 320 acres.

Line 4, west half northeast quarter, section 9, township 9, range 3, 80 acres.

Line 4, southeast quarter section 9, township 9, range 3, 160 acres.

75 Line 13, all of section 11, township 9, range 3, 640 acres.

Line 14, all of section 13, township 9, range 3, 640 acres.

Line 15, all of section 15, township 9, range 3, 640 acres.

Line 6, all of section 17, township 6, range 3, 640 acres.

Line 7, lot A north Ind. boundary, section 19, township 9, range 3, 42 acres.

Line 7, lot A south Ind. boundary, section 19, township 9, range 3, 60 acres.

Line 7, lot B north Ind. boundary, section 19, township 9, range 3, 67.75 acres.

Line 7, north half northwest quarter, section 19, township 9, range 3, 80 acres.

Line 7, lot C north Ind. boundary, section 19, township 9, range 3, 46 acres.

Line 7, lot C south Ind. boundary, section 19, township 9, range 3, 46 acres.

Line 7, lot D north Ind. boundary, section 19, township 9, range 3, 52 acres.

Line 8, lot B south Ind. boundary, section 21, township 9, range 3, 41 acres.

Line 8, lot A north Ind. boundary, section 21, township 9, range 3, 61.53 acres.

Line 8, lot A south Ind. boundary, section 21, township 9, range 3, 37.24 acres.

Line 34, lot C southwest quarter southwest quarter, section 21, township 9, range 3, 40 acres.

Line 34, lot D southeast quarter southeast quarter, section 21, township 9, range 3, 40 acres.

Line 34, lot E north Ind. boundary, section 21, township 9, range 3, 69 acres.

Line 34, lot E, south Ind. boundary, section 21, township 9, range 3, 68.18 acres.

Line 8, lot A in northeast quarter, section 21, township 9, range 3, 36 acres.

Line 8, lot B in southeast quarter, section 21, township 9, range 3, 57 acres.

Line 16, north half northwest quarter, section 23, township 9, range 3, 80 acres.

76 Line 16, southwest quarter northwest quarter, section 23, township 9, range 3, 40 acres.

Line 16, northeast quarter northeast quarter, section 23, township 9, range 3, 50 acres.

Line 16, lot A, north Ind. boundary, section 23, township 9, range 3, 65 acres.

Line 16, lot D, south Ind. boundary, section 23, township 9, range 3, 60 acres.

Line 16, lot C south Ind. boundary, section 23, township 9, range 3, 50 acres.

Line 14, lot A south Ind. boundary, section 23, township 9, range 3, 38 acres.

Line 16, lot B southwest quarter southeast quarter, section 23, township 9, range 3, 40 acres.

Total 14,506 acres.

Line 2, north half northwest quarter, section 25, township 9, range 3, 80 acres.

Line 2, south half northeast quarter, section 25, township 9, range 3, 80 acres.

Line 2, southeast quarter, section 25, township 9, range 3, 160 acres.

Line 2, south half southwest quarter, section 29, township 9, range 3, 80 acres.

Line 35, north half section 27, township 9, range 3, 320 acres.

Line 35, southwest quarter, section 27, township 9, range 3, 160 acres.

Line 36, section 29, township 9, range 3, 640 acres.

Line 37, section 31, township 9, range 3, 640 acres.

Line 38, section 33, township 9, range 3, 640 acres.

Line 39, section 35, township 9, range 3, 640 acres.

Total 17,946 acres.

Line 40, south half section 3, township 9, range 4, 320 acres.

Line 40, northwest quarter, section 3, township 9, range 4, 160 acres.

77 Line 40, west half northeast quarter section 3, township 9, range 4, 80 acres.

Line 40, southeast quarter northeast quarter, section 3, township 9, range 4, 40 acres.

Line 44, north half section 11, township 9, range 4, 320 acres.

Line 44, northeast quarter southwest quarter section 11, township 9, range 4, 40 acres.

Line 44, south half southeast quarter, section 11, township 9, range 4, 80 acres.

Line 46, section 15, township 9, range 4, 640 acres.

Line 48, northeast quarter, section 23, township 9, range 4, 160 acres.

Line 48, north half northwest quarter, section 23, township 9, range 4, 80 acres.

Line 48, lot C, north Ind. boundary, section 23, township 9, range 4, 41.45 acres.

Line 48, lot B, north Ind. boundary, section 23, township 9, range 4, 54 acres.

Line 48, lot A, north Ind. boundary, section 23, township 9, range 4, 65.80 acres.

Line 59, east half northwest quarter, section 5, township 9, range 5, 80 acres.

Line 59, west half northeast quarter, section 5, township 9, range 5, 80 acres.

Line 59, northwest quarter southeast quarter, section 5, township 9, range 5, 40 acres.

Line 59, southeast quarter southeast quarter, section 5, township 9, range 5, 40 acres.

Line 59, south half southwest quarter, section 5, township 9, range 5, 80 acres.

Line 61, northeast quarter northwest quarter, section 9, township 9, range 5, 40 acres.

Line 61, south half northwest quarter, section 9, township 9, range 5, 80 acres.

Line 61, northeast quarter section 9, township 9, range 5, 160 acres.

78 Line 61, northeast quarter southwest quarter, section 9, township 9, range 5, 40 acres.

Line 61, north half southeast quarter, section 9, township 9, range 5, 80 acres.

Line 61, southwest quarter southeast quarter, section 9, township 9, range 5, 40 acres.

Line 66, southeast quarter, section 21, township 9, range 5, 160 acres.
Total 20,947.25 acres.

Line 51, southeast quarter northwest quarter, section 31, township 10, range 3, 40 acres.

Line 51, south half northeast quarter, section 31, township 10, range 3, 80 acres.

Line 51, southeast quarter section 31, township 10, range 3, 160 acres.

Line 51, east half southwest quarter, section 31, township 10, range 3, 80 acres.

Line 75, northeast quarter, section 5, township 10, range 5, 160 acres.

Line 75, east half southeast quarter, section 5, township 10, range 5, 80 acres.

Line 75, southwest quarter southeast quarter, section 5, township 10, range 5, 40 acres.

Line 75, west half section 5, township 10, range 5, 320 acres.

Line 76, all of fraction northeast Ind. boundary, section 7, township 10, range 5, 32.26 acres.

Line 81, east half northwest quarter, section 17, township 10, range 5, 80 acres.

Line 81, east half northeast quarter, section 17, township 10, range 5, 80 acres.

Line 81, southwest quarter northeast quarter, section 17, township 10, range 5, 40 acres.

Line 81, south half section 17, township 10, range 5, 320 acres.

Line 82, southwest quarter northwest quarter, section 21, township 10, range 5, 40 acres.

79 Line 82, northeast quarter, section 21, township 10, range 5, 160 acres.

Line 82, south half section 21, township 10, range 5, 320 acres.

Line 84, section 29, township 10, range 5, 640 acres.

Line 85, north half northwest quarter, lots 3 and 4, section 33, township 10, range 5, 80 acres.

Line 85, southwest quarter northwest quarter, lot 5, section 33, township 10, range 5, 40 acres.

Total, 23,739.51 acres.

RECAPITULATION.

Township 8, range 2, 560 acres.

Township 8, range 3, 2,020 acres.

Township 8, range 4, 5,260 acres.

Township 9, range 2, 1,029.30 acres.

Township 9, range 3, 9,076.70 acres.

Township 9, range 4, 2,081.25 acres.

Township 9, range 5, 920 acres.

Total number, 23,739,51 acres.

This contract, deed, and conveyance is made, entered into, and executed under and in pursuance of a resolution passed by the board of directors of said Tennessee & Coosa Railroad Company, at their office in Guntersville, Marshall County, Alabama, at a meeting regularly called in pursuance of the laws of said corporation, and which resolution is spread upon the minutes of the meeting of said board of directors.

THE STATE OF ALABAMA, MARSHALL COUNTY :

I, T. A. Street, probate judge in and for said county and State, do hereby certify that Louis Weyth, whose name is signed to the foregoing conveyance, and who is known to me, acknowledges before me this day that, being informed of the contents of the conveyance, he executed the same, voluntarily, as the president of the Tennessee and Coosa Railroad Company, for the purposes therein contained and mentioned.

Given under my hand and seal of office this February 7, 1887.

T. A. STREET,
Probate Judge.

THE STATE OF ALABAMA, MARSHALL COUNTY,

OFFICE OF THE JUDGE OF PROBATE COURT:

I hereby certify that the within conveyance was filed in this office for record on the 7th day of February, A. D. 1887, at _____ o'clock _____ m., and duly recorded the 7th day of February, A. D. 1887, in Book "O" of deeds, pages 704 to 711, and examined.

T. A. STREET,
Judge of Probate Court, Marshall County.

THE STATE OF ALABAMA, MARSHALL COUNTY :

I, T. A. Street, judge of probate in and for said county and State, do hereby certify that the foregoing to be a true and correct copy of a certain deed of conveyance as found of record in my office.

Given under my hand at office this 8th day of November, 1890.

[FAL.] T. A. STREET,
Judge of Probate.

(Endorsed:) Filed October 31, 1891. N. W. Trimble, clerk.

81

Order appointing receiver.

In the circuit court of the United States for the southern division of the northern district of Alabama.

| | | |
|--|---|--------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE' AND COOSA RAILROAD COM- pany et als. | | |

In the above entitled cause, motion having been made by the complainant for the appointment of a receiver and the issuance of an injunction pendente lite, and it appearing to the satisfaction of the court that from the situation and attitude of the parties it is inadvisable to allow the time requisite to give notice to elapse before granting relief by the appointment of a receiver, and that there is danger of waste and injury of and to the property described in the bill by delay, it is therefore ordered by the court:

That Owen Holmes, esq., of Birmingham, Ala., be and he is hereby appointed receiver in said cause upon his entering into bond in the sum of ten thousand dollars, payable and conditioned according to law, with good and sufficient sureties thereon, to be approved by the clerk of said court.

It is further ordered that said receiver shall have power and authority to demand, collect, receive and give proper remittances for all rents due, for or to become due, for or on account of the lands described in the first section of the original bill, or in Exhibit A thereto attached; and after leave of court granted, to sue for, collect, and receive all sums that may be due and owing to the United States on account of any and all waste or trespasses committed by any person to or on any of said lands; that said receiver shall take charge, possession, and control of said lands described in the first section of the bill in this case and in Exhibit A thereto attached, and to safely keep, preserve, and protect the timber and timber trees growing or being thereon, and to take possession of all lumber, ores, and minerals now on said lands, and heretofore severed therefrom, until the further order of this court in relation thereto; but said receiver

82 shall not take possession, charge, or control of any dwelling house on said lands, or of any of said lands which are now in the possession of bona fide purchasers for value from said railroad company, but the question of the bona fide of the holding of any person in possession of said lands shall be determined by this court in cases where any controversy arises between the said receiver and such purchaser or purchasers. Said receiver shall not take possession, charge, or control of the road bed, right of way, station houses, and other buildings of like character belonging to the said Tennessee & Coosa Railroad Company. All other questions as to the rights, powers, and duties of said receiver are reserved until the further order of the court.

It is further ordered that an injunction pendente lite be issued out of this court, directed to said Tennessee & Coosa Railroad Company, Hugh Carlisle, the Nashville, Chattanooga & St. Louis Railway Company, and the Manhattan Trust Company, their agents, attorneys, servants, and employees, enjoining and restraining them, and each of them, and all other

persons from removing or causing to be removed any timber, lumber, logs, coal, iron ore, manganese, or other mineral or ore of value, from or off any of the lands described in the bill, or from going or trespassing on said lands, or cutting timber thereon or mining coal or any mineral thereon or thereunder, and from collecting, receiving, or taking possession of any money, property, or thing of value or purchase money, rent, income, or profit of or from any of the lands described in said bill, and in the exhibits thereto attached.

(Signed)

JOHN BRUCE, *Judge*.

NOVEMBER 12, 1891.

(Endorsed:) Filed November 13, 1891. (Signed) N. W. Trimble, clerk.

83

Order by telegram, November 13, 1891.

THE UNITED STATES

*vs.*THE TENNESSEE AND COOSA RAILROAD CO.
et als.

No. 40. In equity.

To N. W. TRIMBLE, *Clerk United States Court, Birmingham:*

Withhold order for receiver and injunction in case of United States vs. Tennessee and Coosa Railroad Co. Answer.

(Signed)

JOHN BRUCE, *Judge*.

Dated, MONTGOMERY, ALA., November 13, 1891.

(Endorsed:) Received and filed November 13, 1891. N. W. Trimble, clerk.

Order by telegram, November 16, 1891.

THE UNITED STATES,

*vs.*THE TENNESSEE AND COOSA RAILROAD CO.
et als.

No. 40. In equity.

To N. W. TRIMBLE, *Clerk United States Court, Birmingham, Ala.:*

Let order issue for receiver and injunction in case of United States vs. Tennessee and Coosa River Railroad Co.

(Signed)

JOHN BRUCE, *Judge*.

Dated, MONTGOMERY, ALA., November 16, 1891.

84

Bond of receiver, Owen T. Holmes.

State of Alabama, Jefferson County. In circuit court of United States.

UNITED STATES

*vs.*TENNESSEE AND COOSA RAILROAD COMPANY
et als.

No. 40. In equity.

Know all men by these presents, That we, Owen T. Holmes, W. H. Smith, J. W. Bass, W. H. Hunter, A. A. Tyler, D. A. Hughes, and J. T. McKnight, are held and firmly bound unto N. W. Trimble, clerk

of the circuit court of the United States, for the southern division of the northern district of the State of Alabama, in the sum of ten thousand (\$10,000) dollars, for which, well and truly to be paid, we and each of us bind ourselves, and each of us, our heirs, executors, and administrators, jointly and severally by these presents.

The condition of the above obligation is such that, whereas the above bound Owen T. Holmes has, upon the application of the United States, been appointed receiver of the property and effects mentioned in the bill of complaint in the above entitled cause. Now, if the said Owen T. Holmes shall well and truly perform and discharge all duties which may devolve upon him as such receiver, and shall faithfully account for and pay over all property, money, and effects coming into his hand as such receiver as required by law and the mandates of the court having jurisdiction over such receivership, then this obligation shall be null and void, otherwise to remain in full force and effect.

Executed this 10th day of November, 1891.

(Signed)

| | |
|-----------------|---------|
| OWEN T. HOLMES. | [SEAL.] |
| W. H. SMITH. | [SEAL.] |
| J. W. BASS. | [SEAL.] |
| W. H. HUNTER. | [SEAL.] |
| A. A. TYLER. | [SEAL.] |
| D. A. HUGHES. | [SEAL.] |
| J. T. McKNIGHT. | [SEAL.] |

Taken and acknowledged before me this 20th day of November, 1891.

N. W. TRIMBLE, *Clerk.*

85 THE STATE OF ALABAMA, JEFFERSON COUNTY :

Before me, J. F. Martin, a notary public in and for said county and State, personally appeared D. A. Hughes, who, being duly sworn, deposes and says that he is worth in real and personal property the sum of five thousand dollars, said property situated in the State of Alabama.

D. A. HUGHES.

Sworn to and subscribed before me on this the 19th of November, 1891.

JOHN F. MARTIN, *Notary Public.*

STATE OF ALABAMA, JEFFERSON COUNTY :

Personally appeared before me, E. T. Broadway, deputy clerk United States circuit court, northern district of Alabama, J. W. Bass, who is known to me, and who, being duly sworn, deposes and says that he is worth the sum of two thousand dollars over and above his just debts and liabilities and all legal exemptions allowed under the laws and constitution of Alabama.

J. W. BASS.

Subscribed and sworn to before me this 20th day of November, 1891.

E. T. BROADWAY,

Deputy Clerk U. S. Circuit Court, Northern District Alabama.

STATE OF ALABAMA, JEFFERSON COUNTY:

Personally appeared before me, E. T. Broadway, deputy clerk for the United States circuit court for the northern district of Alabama, W. H.

86 Smith, who is known to me, and who, being duly sworn by me, deposes and says that he is worth the sum of five thousand dollars over and above his just debts and liabilities and all legal exemptions allowed under the laws and constitution of Alabama.

W. H. SMITH.

Subscribed and sworn to before me this 20th day of November, 1891.

E. T. BROADWAY,

*Deputy Clerk U. S. Circuit Court,
Southern Division Northern District Alabama.*

THE STATE OF ALABAMA, JEFFERSON COUNTY:

Personally appeared before me, E. T. Broadway, deputy clerk of the United States circuit court for the northern district of Alabama, J. T. McKnight, who is known to me, and who, being by me first duly sworn, deposes and says that he is worth the sum of two thousand five hundred dollars over and above his just debts and liabilities and all legal exemptions allowed under the laws and constitution of Alabama.

J. T. McKNIGHT.

Sworn to and subscribed before me this the 20th day of November, A. D. 1891.

E. T. BROADWAY,

Deputy Clerk U. S. Circuit Court, Northern District of Alabama.

Approved this 20th day of November, 1891.

N. W. TRIMBLE, *Clerk.*

(Endorsed:) Filed November 20, 1891. N. W. Trimble, clerk.

87^f *Answer of James S. Johnson.*

In the circuit court of the United States for the southern division of the northern district of Alabama.

THE UNITED STATES

vs.

THE TENNESSEE AND COOSA RAILROAD
Company et als.

} No. 40. In chancery.

Now comes the following-named defendant in the above-entitled cause and for answer says:

That I own and claim lands purchased from the T. and C. R. R. Co., and hold title and deed from said company, and have sold and conveyed part of said purchased premises; my purchase was bona fide for value, and the date of sale of said lands by the company was 1872, and prior to the forfeiture act of September 29, 1890, and herewith pray that this may be taken as my answer, and that I be discharged from further answer and attendance upon this court.

(Signed)

JAMES S. JOHNSON.

DECEMBER 24, 1891.

(Endorsed:) Filed December 30, 1891. N. W. Trimble, clerk.

In the circuit court of the United States for the southern division of the northern district of Alabama.

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|--|---|--------------------|
| UNITED STATES <i>vs.</i> TENNESSEE AND COOSA RAILROAD COMPANY et als. | } | No. 40. In equity. |
|--|---|--------------------|

Appearance for Nashville, Chattanooga and St. Louis Railway Company.

"THE MERCHANTS,"
Montgomery, Ala., December 30, 1891.

E. T. BROADWAY, Esq., *Birmingham, Ala.*

88 DEAR SIR: Please enter the appearance of R. C. Brickell and myself for the Nashville, Chattanooga and St. Louis Railway in the case of The United States vs. Tennessee and Coosa Railroad and others. We do not appear for the Tennessee and Coosa Railroad Company.

Please advise me of the receipt of this, and address me at Huntsville, Ala.

Yours, truly,
(Signed)

OSCAR R. HUNDLEY.

(Endorsed:) Filed December 31, 1891. N. W. Trimble, clerk.

Injunction pendente lite.

In the circuit court of the United States for the southern division of the northern district of Alabama.

| | | |
|--|---|--------------------|
| THE UNITED STATES <i>vs.</i> THE TENNESSEE AND COOSA RAILROAD COM- pany et als. | } | No. 40. In equity. |
|--|---|--------------------|

The President of the United States of America:

To the Tennessee and Coosa Railroad Company; Hugh Carlisle; the Nashville, Chattanooga and St. Louis Railway Company, and the Manhattan Trust Company, their and each of their agents, attorneys, servants, and employes, and all other persons.

Whereas the United States of America has exhibited its bill of complaint in the circuit court of the United States for the southern division of the northern district of Alabama against the said The Tennessee and Coosa Railroad Company; Hugh Carlisle; the Nashville, Chattanooga and St. Louis Railway Company; the Manhattan Trust Company et als., among other things praying for injunctions against the said The Tennessee and Coosa Railroad Co.; Hugh Carlisle; the Nashville, Chattanooga and St. Louis Railway Company, and the Manhattan Trust Company, their agents, employes and servants, enjoining and restraining them, and each of them, from removing or causing to be removed any timber logs, timber, coal, iron ore, or other valuable

mineral from or off said lands described in the bill aforesaid, or from going on or trespassing upon said lands described in said bill, and from collecting, receiving, or taking possession of any money, property, or thing of value, as purchase money, rent, income, or profit from any of said lands described in said bill of complaint.

Now, therefore, we do strictly command you, the said Tennessee and Coosa Railroad Company, Hugh Carlisle, the Nashville, Chattanooga and St. Louis Railway Company, and the Manhattan Trust Company, your agents, attorneys, servants, and employes, and each of you, and all other persons, under the pains and penalties which may fall upon you and each of you in case of disobedience, that you forthwith, and until the further order, judgment, and decree of this court, desist from, and you and each of you are hereby strictly enjoined from, removing or causing to be removed any timber, lumber, logs, coal, iron ore, manganese, or other mineral or ore of value from or off any of the lands described in the original bill exhibited in this court against you as aforesaid, or from going or trespassing on said lands, or cutting timber thereon, or mining coal thereon or thereunder, and from collecting, receiving, or taking possession of any money, property, or thing of value as purchase money, rent, income, or profit of or from any of the lands described in said bill and in the exhibits thereto attached.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at Birmingham, Alabama, this the 20th day of November, A. D. 1891.

[SEAL.]

(Signed) N. W. TRIMBLE,
Clerk U. S. Cir. Court, Nor. Dist. Ala., Sou. Dic.

(Endorsed:) Received in United States marshal's office November 20, 1891. A. R. Nininger, U. S. marshal.

90

Marshal's return.

Executed by serving copy of injunction on Hugh Carlisle; R. P. Whitman, agent Nashville, Chattanooga & St. Louis R. R. Co., and S. K. Reyburn, secretary Tennessee & Coosa R. R. Co., November 23, 1891.

A. R. NININGER, *U. S. Marshal*,
By J. F. LANIER, *Deputy*.

Cost, \$6.00.

Manhattan Trust Co. of New York have no agent in this State, and I have been unable to obtain service of injunction on them.

A. R. NININGER, *U. S. Marshal*.

JANUARY 2, 1892.

(Endorsed:) Returned and filed January 2, 1892. N. W. Trimble, clerk.

Subpoena in equity.

In the circuit court of the United States.

THE UNITED STATES

vs.

THE TENNESSEE AND COOSA RAILROAD CO. ET AL.

} No. 40.

The President of the United States of America to the marshal for the northern district of Alabama, greeting:

You are hereby commanded to summon the Tennessee & Coosa Railroad Company, a corporation created by and existing under the laws of the State of Alabama, and a citizen of the said northern division of the said northern district of Alabama; and the Nashville, Chattanooga & St. Louis Railway Company, a corporation chartered under the laws of the State of Tennessee; the Manhattan Trust Company, a corporation chartered and existing under the laws of the State of New York, and Hugh Carlisle, who

91 is a resident citizen of the county of Marshall, in the said northern division of the northern district of Alabama; W. H. McCord, Wm. Curry, W. T. McCord, J. T. Hambriek, W. R. Frazier, Mrs. S. S. Fletcher, Joseph J. Pugh, W. A. Darnell, W. W. Harper, W. A. J. Matthews, W. F. Stone, J. B. Hopkins, W. B. Hayes, N. W. West, W. H. Haynes, Jno. J. Patterson, James J. Stevenson, B. C. Bartlett, Asa Young, C. T. Norton, W. L. Lowe, E. J. Barksdale, Walter Davis, John Smith, Willis W. Curry, Benjamin Scott, James S. Johnson, A. J. Fletcher, B. O. Scott, each and all of whom are resident citizens of the northern division of the said northern district of Alabama; Jasper M. Dixon, John K. Roe, Madison Cerns, Jno. Eason, David Scott, Jno. H. Fletcher, John Pepper, Bethel L. Leith, J. P. Scott, J. J. Smith, J. W. Whitt, T. J. Bates, Joe Slaton, E. A. Toney, W. H. Baker, Thomas Cassells, Lindsey Holland, Solomon Beginfield, Solomon P. Ledbetter, Stephen L. Rodgers, George W. Bruce, J. H. Bruce, John Mizzell, William Avery, John Collier, W. W. Elkins, William Rhodes, Tom Simpson, Jack Keigle, T. B. Thrasher, B. F. Burns, G. F. Amons, Lewis Whitt, Anderson Whitt, Dock Gilbreath, J. W. Jones, W. W. Clay, and A. M. Gilbreath, all of whom are residents each and citizens of the southern division of the northern district of Alabama; if to be found in your district, that they, laying aside all excuse, appear personally at the office of the clerk of the circuit court of the northern district of the State of Alabama, southern division, in the city of Birmingham, in said district, on the rule day to be held on the first Monday in January, 1892, next, to answer, plead, or demur to the bill of complaint exhibited in said circuit court by the United States of America, complainant, against the Tennessee and Coosa Railroad Company, a corporation created and existing under the laws of the State of Alabama and a citizen of the northern division of said northern district of Alabama; and The Nashville and Chattanooga and St. Louis Railway Company, a corporation chartered under the laws of the State of Tennessee; the Manhattan Trust Company, a corporation chartered by and existing under the laws of the State of New York; and Hugh Carlisle, who is a resident

92 citizen of the county of Marshall, in the said northern district of Alabama; W. H. McCord, William Curry, W. T. McCord, J. T. Hambrick, W. R. Frazier, Mrs. S. S. Fletcher, Jasper J. Pugh, W. A. Darnell, John W. Darnell, W. W. Harper, W. A. J. Mathews, W. F. Stone, J. B. Hopkins, W. B. Hayes, N. W. West, W. H. Haynes, John J. Patterson, James P. Stevenson, B. C. Bartlett, Asa Young, C. T. Norton, W. L. Lowe, E. J. Barksdale, Walter Davis, John Smith, Willis W. Curry, Benjamin Scott, James S. Johnson, A. J. Fletcher, B. O. Scott, each and all of whom are resident citizens of the northern division of the said northern district of Alabama; Jasper M. Dixon, John K. Roe, Madison Cerns, John Eason, David Scott, John H. Fletcher, John Pepper, Bethel L. Leith, J. P. Scott, J. J. Smith, J. W. Whitt, T. J. Bates, Joe Slaton, E. A. Toney, W. H. Baker, Thomas Cassells, Lindsey Holland, Solomon Beginfield, Solomon P. Ledbetter, Stephen L. Rogers, George W. Bruce, J. H. Bruce, John Mizzell, William Avery, John Collier, W. W. Elkins, William Rhodes, Tom Simpson, Jack Keigle, T. B. Thrasher, B. F. Burns, G. F. Amos, Lewis Whitt, Anderson Whitt, Dock Gilbreath, J. W. Jones, R. W. Clay, and A. M. Gilbreath, all of whom are residents each and citizens of the southern division of the northern district of Alabama, defendants; a copy of which will be furnished on application to the clerk. Herein fail not, and have you then and there this precept, with your return thereon endorsed.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 20th day of November, in the year of our Lord one thousand eight hundred and ninety-one, and of American Independence 116th year.

Attest:

[SEAL.]

N. W. TRIMBLE,
Clerk U. S. Circuit Court.

Issued 20th day of November, A. D. 1891.

MEM.—The defendants are to enter their appearance and to file their answers or demurrers to said bill in the clerk's office on or before the day on which this writ is returnable, otherwise a decree pro confesso may be entered.

The marshal is required to execute this writ twenty days before the return day thereof.

93

Marshal's return.

Received in U. S. marshal's office November 20, 1891.

A. R. NIXINGER, *U. S. Marshal.*

Executed by serving a copy of subpoena in equity on T. J. Bates November 21, 1891, and on John Whitt, David Scott, J. P. Scott, Bethel L. Leith, John Pepper, J. H. Fletcher, J. K. Rowe, Marion Cerns, John R. Eason, Jasper M. Dixon, and J. J. Smith, November 26, 1891.

Costs, \$26.82.

A. R. NIXINGER, *U. S. Marshal,*
By J. M. DANIEL, *Deputy.*

Executed further by delivering copy of the within subpoena in equity to Joe Slaton, E. A. Toney, W. W. Baker, Lindsey Holland, Thomas Cassell, Anderson Whitt, A. M. Gilbreath, Dock Gilbreath, J. F. Amos, December 7, 1891, and Solomon P. Ledbetter, John Mizzell, J. H. Bruce, Geo. H. Bruce, Stephen L. Rodgers, Jack Cagle, Wm. Rhodes, W. W. Elkins, Tom Simpson, and T. B. Thrasher, on December 8, 1891, and R. W. Clay, B. F. Burns, Louis Whitt, John Collier, and Wm. Avery, December 9, 1891. J. W. Jones not found, and Solomon Beginfield is in Georgia.

Costs, \$51.78. 24 copies, \$8.00. 63 miles travel, at 6c., \$3.78.

A. R. NIXINGER, *U. S. Marshal*,
By J. N. HOLSENBACK, *Deputy*.

Executed further by serving a copy of subpoena in equity on Hugh Carlisle, R. P. Whitman, agent Nashville, Chattanooga & St. Louis Railroad Company; S. K. Rayburn, secretary Tennessee & Coosa Railroad Company; November 23, 1891, and Jas. J. Johnson, W. W. Curry, Jno. Smith, W. L. Lowe, W. H. McCord, W. T. McCord, J. T. Hambrick, W. R. Frazier, W. A. Darnell, John W. Darnell, W. W. Harper, W. A. J. Matthews, W. F. Stone, J. B. Hopkins, W. B. Hayes, N. W. West, and C. T. Norton, November 24, 1891; and A. J. Fletcher, Ben Scott, Walter Davis, E. J. Barksdale, Asa Young, B. C. Bartlett, J. B. Stevenson, John J. Patterson, W. H. Haynes, B. O. Scott, Wm. Curry, Mrs. S. L. Fletcher, Jas. J. Pugh, November 25, 1891.

Costs, \$73.38. 33 copies, at \$2, \$66. Mileage, 123 miles, at 6c., \$7.38.

A. R. NIXINGER, *U. S. Marshal*,
By J. F. LAXIER, *Deputy*.

94 Manhattan Trust Company, of New York, having no agent in this State I have been unable to obtain service of subpoena in equity on them.

A. R. NIXINGER, *U. S. Marshal*.

JANUARY 2, 1892.

(Endorsed:) U. S. circuit court, in chancery. No. 40. The United States vs. The Tennessee & Coosa Railroad Company, et als. Subpoena in equity. Issued November 20, 1891. Recorded in Book T, from pp. 62 to 65. Returned and filed January 4, 1892. N. W. Trimble, clerk.

95 *Answer of W. W. Harper.*

In the circuit court of the United States for the southern division of the northern district of Alabama.

| | | |
|--|---|----------------------|
| THE UNITED STATES | } | No. 40. In chancery. |
| <i>vs.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD COMPANY et als. | | |

Now comes the defendant, W. W. Harper, in the above entitled cause, and for answer saith:

That he is a bona fide owner of some of the land granted to the T. & C. R. R. Co., having paid the price therefor by judgment of chancery

court, and that he occupies other of said lands, but said occupancy is bona fide with the intent to homestead the same when the suit now pending to set aside the certification of said grant is ended and the same declared open to homestead entry, and such occupancy is not antagonistic to the Government of the United States, but subject thereto; and for these causes ask to be released from further answer in this case and from attendance upon this court.

(Signed)

W. W. HARPER.

DECEMBER 30, 1891.

(Endorsed :) Filed January 2, 1892. N. W. Trimble, clerk.

96 *Answer of E. J. Barksdale, W. W. Curry, J. T. Hambrick, B. C. Bartlett, Asa Young, Walter Davis, and Joseph J. Pugh.*

In the circuit court of the United States for the southern division of the northern district of Alabama.

| | | |
|--|---|--------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD COMPANY et als. | | |

Now come the following named defendants in the above entitled cause and for answer say:

That we occupy and reside upon lands granted to the State of Alabama for the use of the T. & C. R. R. Co., and which lands were, by act of Congress September 29, 1890, forfeited, and our holding or occupancy of such lands are not antagonistic to the United States, but with the bona fide intent to homestead the same under the provisions of said forfeiture act, when the contest now pending to set aside the certification of the lands so granted is ended and the lands declared open for homestead entry. Therefore, we ask to be relieved from further answer in this case and from attendance upon this court.

(Signed)

E. J. BARKSDALE.
W. W. CURRY.
J. T. HAMBRICK.
B. C. BARTLETT.
ASA YOUNG.
WALTER DAVIS.
JOSEPH PUGH.

(Endorsed :) Filed January 2, 1892. N. W. Trimble, clerk.

97 *Answer of J. W. Darnell and W. A. Darnell.*

In United States circuit court, southern division, northern district of Alabama.

| | | |
|--|---|--------------------|
| UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY et als. | | |

Now come the following-named settlers and defendants in this cause upon lands granted to the State of Alabama for use of the Tennessee

and Coosa Railroad Company, which said lands were, by act of Congress, September 29, 1890, forfeited, and for answer say :

We occupy portions of said land, but such occupancy is not antagonistic to the Government of the United States, but in good faith as settlers to homestead the same when the contest now pending in said court is ended and the said lands declared subject to homestead entry ; and for these reasons we ask to be discharged and relieved from further answer in this cause.

January 2, 1892.

(Signed)

J. W. DARNELL.

W. A. DARNELL.

(Endorsed :) Filed January 4, 1892. N. W. Trimble, clerk.

98 *Answer of T. B. Thrasher, J. E. Mizzell, A. M. Gilbreath, G. W. Bruce, J. H. Bruce, Stephen L. Rogers, J. T. Gilbreath, and S. P. Ledbetter.*

In the circuit court of the United States for the southern division of the northern district of Alabama.

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|--------------------------------------|---|----------------------|
| UNITED STATES | } | No. 40. In chancery. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY | | |
| et als. | | |

Now come the following-named defendants in the above-entitled cause, and for answer say :

That we occupy and reside upon land granted to the Tennessee and Coosa Railroad Company, and which lands were, by act of Congress, September 29, 1890, forfeited, and our holding is not adverse to the Government of the United States, but with the bona fide intent to homestead the same when the title thereto is restored to the United States ; and for these reasons we ask to be relieved from further answer and from attendance upon this court.

(Signed)

T. B. THRASHER.

J. E. MIZZELL.

A. M. GILBREATH.

G. W. BRUCE.

J. H. BRUCE.

STEPHEN L. ROGERS.

J. T. GILBREATH.

S. P. LEDBETTER.

DECEMBER , 1891.

(Endorsed :) Filed January 4, 1892. N. W. Trimble, clerk.

99 *Answer of J. D. Hopkins, W. B. Hayes, and C. T. Norton.*

In the circuit court of the United States for the southern division of the northern district of Alabama.

| | | |
|---|---|-------------------------|
| THE UNITED STATES | } | No. 40. In chancery. |
| <i>vs.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD COM- pany et als. | | |

Now come the following-named defendants in the above-entitled cause, and for answer say :

That we occupy and reside upon the lands granted to the State of Alabama for the use of the Tennessee and Coosa Railroad Company, and which lands were, by act of Congress, September 29, 1890, forfeited, and our holding or occupancy of such lands are not antagonistic to the United States, but with the bona fide intent to homestead the same, under the provisions of said forfeiture act, when the contest now pending to set aside the certification of the lands so granted is ended, and the lands declared opened for homestead entry.

Therefore we ask to be released from further answer in this case, and from attendance upon this court.

(Signed)

J. D. HOPKINS.
W. B. HAYES.
C. T. NORTON.

(Endorsed :) Filed January 4, 1892. N. W. Trimble, clerk.

100 *Answer of R. W. Clay, Lindsey Holland, W. H. Baker, E. A. Toney, J. J. Smith, John Smith, John H. Fletcher, and David Scott.*

In the circuit court of the United States for the southern division of the northern district of Alabama.

| | | |
|---|---|-----------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY et als. | | |

Now comes the following-named defendants in the above-entitled cause, and for answer say :

That we occupy and reside upon lands granted to the State of Alabama for the use of the Tennessee and Coosa Railroad Company, and which lands were by act of Congress, September 29, 1890, forfeited, and our holding or occupancy of such lands are not antagonistic to the United States, but with the bona fide intent to homestead the same, under the provisions of said forfeiture act, when the contest now pending in said court to set aside the certification heretofore made to said company of the lands so granted is ended, and the said lands declared open for homestead entry.

Therefore we ask to be relieved from further answer in this case, and from attendance upon this court.

(Signed)

R. W. CLAY.
LINDSEY HOLLAND.
W. H. BAKER.
E. A. TONEY.
J. J. SMITH.
JOHN SMITH.
JOHN H. FLETCHER.
DAVID SCOTT.

(Endorsed :) Filed January 4, 1892. N. W. Trimble, clerk.

101

Answer of Willis W. Curry.

In the circuit court of the United States for the southern division of the northern district of Alabama.

| | | |
|--------------------------------------|---|----------------------|
| UNITED STATES | } | No. 40. In chancery. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY | | |
| et als. | | |

Now comes the following-named defendant in the above-entitled cause, and for answer says :

That they do not claim or own or live upon or in any manner occupy any land granted to the State of Alabama for the Tennessee & Coosa River Railroad Company, and for this cause ask to be discharged.

(Signed)

WILLIS W. CURRY, *Defendant.*

(Endorsed :) Filed January 4, 1892. N. W. Trimble, clerk.

Appearance and answer of B. F. Burns.

To the hon. clerk of the U. S. court.

DEAR SIR: I am an actual settler in good faith on the Tennessee and Coosa lands, and as I am not able to come in person, I send this to represent me.

(Signed)

B. F. BURNS.

This JANUARY 2, 1892.

(Endorsed :) Filed January 4, 1892. N. W. Trimble, clerk.

102

Appearance of W. W. Elkins.

In the circuit court of the United States for the southern division of the northern district of Alabama.

| | | |
|--------------------------------------|---|--------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY | | |
| et als. | | |

Now comes W. W. Elkins, one of the respondents to the bill exhibited in the above-entitled cause, and enters his appearance therein.

(Signed)

W. W. ELKINS.

BIRMINGHAM, ALA., *January 4, 1892.*

(Endorsed :) Filed January 4, 1892. N. W. Trimble, clerk.

Appearance Jack Keigle.

In the United States circuit court for the southern division of the northern district of Alabama.

| | | |
|---|---|--------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY et als. | | |

Comes Jack Keigle, one of the respondents in the above-entitled cause, and enters his appearance therein in person.

(Signed)

A. J. CAGLE.

JANUARY 4, 1892.

(Endorsed:) Filed January 4, 1892. N. W. Trimble, clerk.

103 *Appearance of Hugh Carlisle, by Amos E. Goodhue, solicitor.*

In the circuit court of the United States, southern division of northern district of Alabama.

| | | |
|---|---|--------------------|
| THE UNITED STATES OF AMERICA | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD COMPANY et als. | | |

In the above-entitled cause comes Amos E. Goodhue, solicitor for Hugh Carlisle, one of the respondents therein, and enters his appearance for said Hugh Carlisle in above cause.

(Signed)

AMOS E. GOODHUE, *Solicitor.*

JANUARY 4, 1892.

(Endorsed:) Filed January 4, 1892. N. W. Trimble, clerk.

Appearance of David Scott.

In the United States circuit court for the southern division of the northern district of Alabama.

| | | |
|---|---|--------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY et als. | | |

Comes David Scott, one of the respondents in the above-entitled cause, and enters his appearance therein.

(Signed)

DAVID (his x mark) SCOTT.

JANUARY 4, 1892.

(Endorsed:) Filed January 4, 1892. N. W. Trimble, clerk.

104

Appearance of William Rhodes.

In the United States circuit court for the southern division of the northern district of Alabama.

| | | |
|--------------------------------------|---|--------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY | | |
| et als. | | |

Comes William Rhodes, one of the respondents in the above-entitled cause, and enters his appearance therein.

(Signed)

WM. (his x mark) RHODES.

Witness:

E. T. BROADWAY.

JANUARY 4, 1892.

(Endorsed:) Filed January 4, 1892. N. W. Trimble, clerk.

Appearance of Thomas Cassells.

In the United States circuit court for the southern division of the northern district of Alabama.

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|---------------------------------------|---|--------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD COM- | | |
| pany et als. | | |

Comes Thomas Cassells, one of the respondents in the above-entitled cause, and enters his appearance therein.

(Signed)

T. E. CASSELLS.

JANUARY 4, 1892.

(Endorsed:) Filed January 4, 1892. N. W. Trimble, clerk.

105

Decree pro confesso.

| | | |
|---------------------------------------|---|--------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD COM- | | |
| pany et als. | | |

At rules for January, 1892, being the 4th day of January, 1892.

In this cause, it appearing that each of the following-named defendants, to wit: W. T. McCord, W. R. Frazier, Mrs. S. S. Fletcher, W. A. J. Mathews, W. F. Stone, N. W. West, W. H. Haynes, John J. Patterson, James P. Stevenson, W. L. Lowe, Benjamin Scott, A. J. Fletcher, B. O. Scott, Jasper M. Dixon, John K. Roe, Madison Cerns, John Eason, John Pepper, Bethel L. Leith, J. P. Scott, J. W. Whitt, Joe Slaton, William Avery, John Collier, Tom Simpson, G. F. Amons, Lewis Whitt, Anderson Whitt, and the Tennessee & Coosa Railroad Company, and W. H. McCord, were duly served with a subpoena, commanding each of them to appear at the rule day in January, 1892, the same being this the 4th day of January, 1892 (said subpoenas having been served on said persons for more than twenty days prior to the rules day aforesaid), and it further

appearing that said defendants, and each of them, have failed to appear, as commanded by said subpoena, and as, by law and the rules of this court, they were bound to do; it is, therefore, on motion of the solicitor for complainant—

Ordered, adjudged, and decreed, that the matters and things set forth in the bill of complaint exhibited in the above-stated cause be taken as confessed by the said defendants, W. T. McCord, W. R. Frazier, Mrs. S. S. Fletcher, W. A. J. Mathews, W. F. Stone, N. W. West, W. H. Haynes, John J. Patterson, James P. Stevenson, W. L. Lowe, Benjamin Scott, A. J. Fletcher, B. O. Scott, Jasper M. Dixon, John K. Roe, Madison Cerns, John Eason, John Pepper, Bethel Leith, J. P. Scott, J. W. Whitt, Joe Slaton, William Avery, John Collier, Tom Simpson, G. F. Amos, Lewis Whitt, Anderson Whitt, W. H. McCord, and the
106 Tennessee & Coosa Railroad Company, and that a final decree may be hereafter taken against them, according to law and the rules of this court.

N. W. TRIMBLE, *Clerk*.

This JANUARY 4, 1892.

Answer of W. W. Elkins.

In the circuit court of the United States for the southern division of the northern district of Alabama.

| | | |
|------------------------------------|---|--------------------|
| UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE & COOSA RAILROAD COMPANY | | |
| et als. | | |

To the honorable United States circuit court in chancery in the city of Birmingham, Alabama:

This is to certify to the above court that I do not hold nor claim any of the Tennessee & Coosa Railroad lands, nor I am not in possession of any of the above-named lands. This is in answer of copy No. 40 of W. W. Elkins to the honorable United States circuit court in chancery in the city of Birmingham, Ala.

(Signed)

W. W. ELKINS,
Blount County, Ala.

This JANUARY 23, 1892.

(Endorsed:) Filed January 26, 1892. N. W. Trimble, clerk.

107 *Answer and demurrer of Hugh Carlisle.*

In the circuit court of the United States for the southern division of the northern district of Alabama.

| | | |
|-------------------------------------|---|--------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE & COOSA RAILROAD COM- | | |
| pany, Hugh Carlisle et als. | | |

Now comes Hugh Carlisle, respondent in the above case, and demurs to the bill of complaint filed in above case, and assigns the following grounds of demurrer:

1. The bill on its face shows that a portion of the lands embraced in

one of the deeds from the Tennessee & Coosa Railroad Company to Hugh Carlisle, which the bill seeks to have cancelled, is opposite to and coterminous with that portion of the Tennessee & Coosa Railroad which was completed and in operation on the 29th day of September, 1890.

2. The bill on its face shows that if the United States has any rights of the forfeiture act of September, 1890, it has an adequate and complete remedy at law.

3. There is a misjoinder of parties defendant, in that Hugh Carlisle, against whom relief is sought on the grounds that the deeds from the Tennessee & Coosa Railroad to him were without consideration and not bona fide, is joined with other defendants, who are admitted to have purchased from the railroad in good faith, and against whom relief is sought on the sole ground that they purchased after June 3, 1866.

4. The bill is bad, because, if it be true as stated therein, that the Tennessee & Coosa Railroad, after the 4th of June, 1866, had no right to sell the lands described in the bill, then it follows that there is an adequate and complete remedy at law.

5. The bill shows on its face that, under the power to sell conferred upon the Tennessee & Coosa Railroad by the act of June 3, 1856,
108 and prior to the 29th day of September, 1890, Hugh Carlisle acquired a title to the lands lying within the first twenty miles of the Tennessee & Coosa Railroad, which are described in Exhibit D to original bill.

6. The said bill prays to have canceled a deed, Exhibit E to original bill, which includes lands lying opposite to and coterminous with the ten miles of the railroad which the bill avers to have been completed and in operation on the 29th day of September, 1890.

And not waiving above demurrer, but insisting upon the same, and not waiving his right to take advantage of the many insufficiencies of said bill, said respondent Carlisle, answering said bill of complaint, says:

First. Respondent admits the allegations of first, second, third, and fourth paragraphs of said bill.

Second. Respondent, answering fifth paragraph of original bill, admits that the lands granted were made by the said act of June 3, 1856, subject to the disposal of the State of Alabama, and that the said State, through its legislature, by an act of the sixth biennial session of the general assembly, accepted the grant and granted the lands specified in the bill to the Tennessee & Coosa Railroad Company.

Respondent also admits that the Tennessee & Coosa Railroad Company has constructed ten and 22-100 miles of a railroad along the line of definite location of survey from Gadsden northward to Guntersville.

And respondent admits that said railroad company never constructed nor completed twenty miles of railroad at any time prior to September 29, 1890, and did not construct nor complete said ten and 22-100 miles prior to June 3, 1866. And respondent avers that said ten and 22-100 miles of said road extended from Gadsden to Littleton was completed and in operation on and prior to the 29th day of September, 1890. And respondent admits that said railroad selected the lands in said bill described, and such selections were approved by the Secretary of the Interior, and that lands within the fifteen-mile limit were also

selected and approved as stated in said bill. Respondent admits
109 that the Tennessee and Coosa Railroad did not sell any of the
lands granted prior to June 3, 1856, except that it executed a
mortgage upon said lands to secure certain bonds, as will hereinafter
more fully appear. But respondent denies that said railroad never
became entitled under said act to said lands nor to the possession thereof,
and respondent denies that at the expiration of ten years from the date
of act of June 3, 1856, the said lands reverted to the United States.

Third. Respondent admits the allegation contained in the sixth para-
graph of said bill.

Fourth. Respondent admits the facts stated in seventh paragraph of
said bill, but denies the statement of the bill that the United States
became entitled to the possession of all the lands described in fourth
paragraph of bill and Exhibit A on the 4th day of June, 1866, and to
the possession of all the lands described in the second paragraph of said
bill and Exhibit B, so far as any part thereof was selected or approved to
said Tennessee & Coosa Railroad Company; and respondent denies that
the United States became entitled to recover the title to and possession
of all of said lands on the 4th day of June, 1866, so far as the Tennessee
& Coosa Railroad is concerned; and respondent avers that the lands
included in deed from the Tennessee & Coosa Railroad to respondent,
Exhibit D to original bill, are all opposite to and coterminus with the ten
and 22-100 miles of said railroad which was completed and in operation
on the 29th day of September, 1890.

Fifth. Respondent admits the allegations contained in the eighth and
ninth paragraphs of said bill.

Sixth. Respondent admits that the Tennessee & Coosa Railroad Com-
pany executed the deeds to him, as stated in the tenth paragraph of said
bill.

But respondent denies that at the time said instruments were executed
the said railroad company had no right, power, or authority to execute
said instruments, or to convey any right, title, or interest in or
110 to said lands, and that the officers, agents, and directors of said
railroad company and respondent, Hugh Carlisle, well knew this
fact.

And respondent denies that the said Tennessee & Coosa Railroad Com-
pany executed the said deeds with the intention of preventing the rever-
sion of said lands to the United States, and also denies that he accepted
such conveyances, or either of them, with any such intent. And respond-
ent denies that in truth and in fact no money or other thing of value was
paid therefor by said Carlisle, and that the whole transaction was merely
a device to mislead and deceive, and for the purpose of enabling the said
Hugh Carlisle to set up and claim that he held such lands as a purchaser
of value, and in good faith from said railroad company. And respondent
denies that said conveyances were not made and that the said lands were
not sold for the purpose of aiding in the construction of said railroad,
and that no part of the consideration recited to have been paid for said
lands was used in the construction of said railroad, and respondent denies
that he is not a bona fide purchaser for value of said lands. And
respondent denies that he is a purchaser mala fide, well knowing that
said purchase was in violation of the act of June 3, 1856. And

respondent denies that he in truth, and in fact, holds the said lands under a secret trust for said railroad company and the stockholders thereof. And respondent denies that he and his near relatives elected themselves and others subject to their will directors of said Tennessee & Coosa Railroad Company, and by resolution of the board then composed caused the said conveyances, Exhibits D and E to original bill, to be executed for the purpose of defrauding the United States out of said lands.

And respondent avers that he purchased the said lands from the Tennessee & Coosa Railroad Company in good faith and paid for the same the consideration stated in said deeds as will hereinafter more fully appear.

Seventh. Respondent, answering the eleventh paragraph of said bill, admits that the Nashville, Chattanooga & St. Louis Railroad Company claims some interest in a portion of the lands in controversy under some contract with the Tennessee & Coosa Railroad Company, but

111 respondent denies that either the Nashville, Chattanooga & St. Louis Railroad Company or the Manhattan Trust Company has or has ever had any interest whatever in the lands which have been conveyed to respondent by the Tennessee & Coosa Railroad Company, and respondent denies that he has ever at any time made any contract or agreement either with the Nashville, Chattanooga & St. Louis Railroad Company or the Manhattan Trust Company in regard to said lands. And respondent denies that the Manhattan Trust Company has or claims any interest in or to any portion of the lands described in the original bill in this case.

Eighth. Respondent admits that the Nashville, Chattanooga & St. Louis Railroad Company and the Manhattan Trust Company are both nonresidents of Alabama, and that neither the Nashville, Chattanooga and St. Louis Railroad Company nor the Manhattan Trust Company is in possession of any part of said lands. Respondent admits that respondent and other defendants named in the bill are in possession of some portions of said lands, but respondent denies that he is trespassing on said lands, and on the contrary asserts that he is rightfully in possession of such lands as have been conveyed to him, having purchased the same in good faith from the Tennessee and Coosa Railroad Company. And respondent denies that he is insolvent, and on the contrary avers that he is amply able to respond to any judgment that may be obtained against him.

Ninth. Respondent admits that many thousands of acres of the lands described in said bill are covered with forests of yellow pine and other valuable timber trees; respondent denies that he has committed any waste on said lands or any portion of them.

Respondent admits that he has caused some cross-ties to be cut which were sold to the Tennessee & Coosa Railroad Company, and used in the construction of the Tennessee & Coosa Railroad. And respondent avers that many persons, some of whom are named as defendants in said bill, have squatted upon portions of the lands conveyed to respondent by the Tennessee & Coosa Railroad Company, and that respondent has been

112 unable to oust them all out of possession of his said lands, and that squatters so in possession against his will have been engaged and employed in cutting and removing timber from said lands and committing trespasses and waste thereupon.

Tenth. Respondent admits that there are on said lands valuable mines of coal and iron ore and manganese, but respondent denies that he, or anyone claiming under him, is operating any mines of any character on said lands or any portion of the same, but respondent avers that other persons, some of whom are named as defendants in original bill, are, contrary to the will of respondent Carlisle and against his express prohibition, operating such mines on portions of said lands, thereby destroying their value.

Eleventh. Respondent admits that prior to the filing of this bill he was continually endeavoring to collect rents and to derive income and profit from such portions of the lands in controversy as had been conveyed to him by the Tennessee and Coosa Railroad Company. But respondent avers that in fact he has received very little rent, income, or profit in any way from said lands. That many people, conceiving the idea that respondent had no title to the lands, have squatted upon the lands, and refused to recognize respondent as the true owner of said lands, and have used the lands without paying any rent to respondent. That by reason of these squatters upon his land, and the difficulty in gaining and holding possession of the land which was and is rightfully the property of respondent, respondent has been able to collect but very little rent and to derive very little income or profit from said lands. And respondent avers that ever since his purchase, in 1887, he has been paying taxes on said lands as his own, and has paid out more by far in taxes and in litigation in attempting to prevent trespassing upon said lands than he has ever received in any way from them. Respondent denies that he has received anything from the destruction of timber on said lands, or the carrying away of minerals therefrom, except a small amount derived from the sale of cross-ties, as hereinbefore stated. Respondent admits that prior to filing of said bill he did endeavor to collect the purchase money for various parcels of said land which he had sold to
113 sundry and divers persons, and that he has made contracts with various persons for the alienation of parcels of land which had been conveyed to him by the Tennessee & Coosa Railroad Company.

Twelfth. Respondent denies that he, either by himself or his agents, has for many years been cutting and removing timber from said lands, and removing coal, iron ore, and other valuable minerals therefrom, and respondent denies that he has been committing waste or trespass thereon, and also denies that complainant in original bill is entitled to recover any sum in damages from him on accounting.

Thirteenth. And further answering said bill, respondent says that the Tennessee and Coosa Railroad Company was incorporated and organized in 1844 for the purpose of building a railroad from Gadsden to Guntersville, or some point near Guntersville on the Tennessee River; that after having obtained the grant made by Congress in 1856, which is referred to in the bill, and also the act of the sixth biennial session of the general assembly of Alabama, respondent and others, who have been connected with the road from its inception, endeavored to build the road; that in 1859 the Tennessee and Coosa Railroad Company contracted with the respondent to build the road; that in 1860 said Tennessee and Coosa Railroad Company executed a mortgage upon its franchises and other property, and especially upon all the lands granted to the said Tennessee and Coosa Railroad Company by Congress, to secure 400 bonds, each of

the denomination of \$1,000, issued by said company; that eleven of said bonds were pledged as collateral with respondent, to secure him for the amount due to respondent for work done by respondent in building said road prior to 1861. And prior to the time the civil war arose respondent had about 400 hands on the road and was progressing rapidly with the building of the same.

The civil war arose, a blockade was declared, and neither respondent nor the officers of the road were able to proceed further in its construction; that the iron and other material to be used in the construction of the road had been bargained for, but could not be obtained by reason of the blockade. The interference of the war prevented the further

114 ther progress of the road. After the war the financial condition of the respondent, of the Tennessee and Coosa Railroad Company itself, of the leading spirits engaged in the enterprise, and of the country through which the road was to run, all combined to prevent the building of the road. In 1871 the said Tennessee and Coosa Railroad Company made a conditional sale of said road to the East Alabama and Cincinnati Railroad Company; that the purpose of said sale was to insure the completion of said road. But the East Alabama and Cincinnati Railroad Company only completed five miles of said road, between Gadsden and Attalla, and failed to carry the road any further; that in 1885 the Tennessee and Coosa Railroad Company, after long litigation, again resumed possession of the road; that in 1883, while the suit against the East Alabama and Cincinnati Railroad Company, to regain possession of the road, was still pending, the directors of the Tennessee and Coosa Railroad Company passed a resolution, as shown by following extract from the minute book of said company:

OFFICE OF THE TENNESSEE AND

COOSA RAILROAD COMPANY,

Guntersville, Ala., September 14, 1883.

The board of directors of the Tennessee and Coosa Railroad Company met pursuant to a call of the president of said company. Present: Louis Wyeth, president; M. Gilbreath, H. L. Miller, Hugh Carlisle, W. Sibold, and S. K. Rayburn, directors. The president, after calling the meeting to order, stated fully the object of the meeting. It was therefore, on motion of M. Gilbreath, and seconded by H. Miller, resolved, that the action of Hugh Carlisle, in taking actual possession of the roadbed, right of way, franchise, and property of the Tennessee and Coosa Railroad from Attalla to Guntersville, be fully authorized, ratified, confirmed, and approved by the board of directors. (Adopted.) And be it further resolved, that we do ratify the further action of said Hugh Carlisle, in hiring hands and putting them to work in cutting the timber and clearing the roadbed, or track, on said road and using any other effort he may deem necessary in order to take, retain, and hold the possession of said Tennessee and Coosa Railroad track, or bed, and right of way, together with its franchise, subject at all time to the order of the board of directors of the Tennessee and Coosa Railroad Company. (Adopted.) On motion

115 of S. K. Rayburn, seconded by M. Gilbreath, it is resolved, that we do nominate, constitute, and appoint Hugh Carlisle as the financial and constructing agent for the Tennessee and Coosa Railroad Company, thereby clothing him with full power and authority to construct,

build, and equip said railroad, and to put it in running order from Attalla to Guntersville, and for the purpose of investing him with full power and authority, the full intent and purpose of this resolution, we do authorize and empower him, the said Hugh Carlisle, to use any and all of the assets of said Tennessee and Coosa Railroad Company to carry out the full intent and meaning of this resolution, ratifying the same as fully as it is in our power to do. (Adopted.) It is further adopted by said board of directors of said Tennessee and Coosa Railroad Company, and we agree to and with the said Carlisle, to pay him out of the assets of the said road, the original cost and expenses that he may incur in the construction, equipping, and putting said road in running order, together with 20 per cent in addition for superintending and advances made by him on cost of construction, equipping, and putting said road in running order. (Adopted.) It is further resolved that the said Hugh Carlisle hold and retain a lien on said railroad and its franchise, both real and personal, until said costs and expenses incurred by him, the said Hugh Carlisle, are fully paid off and discharged, together with the 20 per cent by said board of directors agreed to be paid, over and above the cost and expenses of constructing and equipping the said road. (Adopted.)

And on motion of W. Sibold, seconded by H. L. Miller, it is resolved that the indebtedness of the Tennessee & Coosa Railroad Company to Hugh Carlisle for work done on the said road during the years 1860 and 1861 are just and equitable, and are by this resolution revived and renewed as against said company; and it is further resolved that all other claims and demands that have heretofore been allowed to said Carlisle by the resolution of the board of directors of said Tennessee & Coosa Railroad Company be, and the same are hereby, revived and renewed against said railroad company from this date, to wit, September 14, 1883, together with the interest that has accrued thereon up to date. (Adopted.)

116 Fourteenth. That immediately after the Tennessee and Coosa Railroad Company regained possession of said road, respondent bent every energy to the task of pushing forward the building of said road. That he expended in this work, under a contract with the Tennessee & Coosa Railroad Company, large sums of his own private resources. That the company had no money, and no other resources except said lands, and had no means of constructing the said road except as the same was supplied by respondent.

That during the year 1886 the road was completed and put in operation a distance of ten and 22-100 miles, as far as Littleton. That during all this time the money which was due respondent for work done on the road prior to 1861 had never been paid. That this sum, together with the amount expended by respondent in building the ten and 22-100 miles of road, which were completed by him, eighty-five thousand seven hundred and fifty and 92-100 dollars. That of this sum about forty-seven thousand dollars was due for work done prior to 1861. That respondent's account against the Tennessee & Coosa Railroad Company was submitted to the board of directors of the company and audited and approved by them. That in February, 1887, the directors of the Tennessee & Coosa Railroad Company, desiring to pay the said indebtedness of the company to Carlisle, and having no other assets out of which

payment could be made, offered to convey the lands described in Exhibit E to original bill in payment *pro tanto* of respondent's account at two and 50-100 dollars per acre, that being the full value of the land at the time. That respondent finally agreed to accept the conveyance of twenty-three thousand seven hundred and thirty-nine and 51-100 acres of said land at two and 50-100 dollars per acre. That in pursuance of a resolution of the board of directors the Tennessee & Coosa Railroad Company conveyed said land absolutely and without any trust or reservation whatever to respondent. That the consideration for this conveyance was money which was due respondent Carlisle for work done by him as a contractor in the construction of the Tennessee & Coosa Railroad under a contract with the railroad company, and the consid-
 117 eration was applied exclusively in the construction of the said road, and to no other purpose whatever. That after receiving the conveyance to said lands there still remained twenty-six thousand four hundred and one and 27-100 dollars due to said Carlisle.

That on the 2d day of April, 1888, the said Tennessee & Coosa Railroad Company, also under authority properly given by the board of directors, conveyed to respondent about sixteen thousand four hundred acres of land, which is particularly described in Exhibit D to original bill, at the price of one 25-100 dollars per acre. That this was the full value at the time of the interest which the Tennessee & Coosa Railroad Company owned in said land. That these lands lay within the conflicting limits of the grants to the Alabama, Chattanooga Railroad Company and the Tennessee & Coosa Railroad Company respectively, and that the Tennessee & Coosa Railroad Company only owned an undivided moiety in said lands. That this land also was conveyed to respondent absolutely without any trust or reservation whatever. That the consideration of this conveyance also was the payment of money due to respondent Carlisle for work done by him as a contractor in the construction of said road under a contract with the Tennessee & Coosa Railroad Company, and the consideration for this conveyance also was applied exclusively in the construction of said road and to no other purpose whatever.

Fifteenth. That all the lands described in Exhibit "E" to original bill are within the limits of the lands granted and approved to the Tennessee & Coosa Railroad Company as a part of the first one hundred and twenty sections, and are opposite to, and coterminous with, the first twenty miles of said Tennessee & Coosa Railroad, as shown by the map of the definite location of said road, which was duly filed in accordance with the terms of the act of Congress approved June 3, 1856. That these lands are included in the lands which by the terms of the said act of Congress the railroad company was authorized to sell in advance of the construction of any portion of the road.

That on the 23rd day of June, 1860, all the lands in controversy in this suit were approved and certified to the Tennessee &
 118 Coosa Railroad Company, under the terms of the said act of Congress, by the Secretary of the Interior, as shown by original lists, which will be introduced in evidence on the trial of this cause. That the said lists were submitted to and approved by the Secretary of the Interior as provided by law, and were approved by said Secretary and properly certified by him on said 23rd day of June, 1860. And now hav-

ing fully answered all the allegations of said original bill of complaint, respondent prays that he may be discharged therefrom with his lawful costs on this behalf expended; and as in duty bound, &c.

(Signed)

GOODHUE & SIBERT,
Solicitors for Respondent.

(Endorsed:) Filed February 1, 1892. N. W. Trimble, clerk.

119 *Order allowing railroad companies and Hugh Carlisle thirty days to answer, etc.*

In the circuit court of the United States for the southern division of the northern district of Alabama.

THE UNITED STATES

vs.

THE TENNESSEE AND COOSA RAILROAD COM-
pany et als.

} No. 40. In equity.

Motion is made in the above case by the Tennessee & Coosa Railroad Company; Nashville, Chattanooga & St. Louis Railway; and Hugh Carlisle; for an order extending the time for answering thirty days from this date, on account of the necessity of getting information from distant points, etc., before proper answer could be put in.

(Signed)

BRICKELL, SEMPLE & GUNTER.
O. R. HUNDLEY, *for Railroads.*
AMOS E. GOODHUE, *for Hugh Carlisle.*

FEBRUARY 1, 1892.

The above motion being made before me at chambers, on consideration thereof, it is ordered that the same be granted, and that the defendants named are allowed thirty days from this date to plead, answer, or demur in the above case, as they may be advised.

(Signed)

JOHN BRUCE, *Judge.*

FEBRUARY 1, 1892.

(Endorsed:) Filed February 2, 1892. N. W. Trimble, clerk.

120 *Decree pro confesso entered April 2, 1892.*

THE UNITED STATES

vs.

THE TENNESSEE AND COOSA RAILROAD COM-
pany et als.

} No. 40. In equity.

In this cause, it appearing to the court that each of the defendants, W. H. McCord, W. T. McCord, W. R. Frazier, Mrs. H. H. Fletcher, W. A. J. Mathews, W. A. Stone, N. M. Vest, W. H. Haynes, John J. Patterson, James P. Stevenson, W. L. Lowe, Benjamin Scott, A. J. Fletcher, B. O. Scott, Jasper M. Dickson, J. M. Rowe, Madison Cerns, John Eason, John Pepper, Bethel L. Leith, J. P. Scott, J. W. Whitt, Joe Slaton, William Avery, John Collier, Tom Simpson, G. F. Amons, Louis Whitt, Thomas Cassell, William Rhodes, and Jack Keigle, were

duly subpoenaed to appear at the rule day in January, 1892 (said subpoenas having been served upon them before the 10th day of December, 1891), and it further appearing that each of said defendants have filed no appearance by counsel to said rule day or since, and that each of them have also failed or refused to plead, answer, or demur to the bill of complaint, as by law and the rules of this court they were bound to do; it is therefore, upon motion of solicitors of complainant, ordered, adjudged, and decreed, that the matters and things set forth in said bill of complaint be taken as confessed against each and all of the said defendants named above in said cause, and that a final decree may hereafter be taken against each and all of them, according to law and the rules of this court.

It is further ordered and decreed that the Manhattan Trust Company, a corporation chartered and existing under the laws of the State of New York, appear and plead, answer, or demur to the bill of complaint filed in this cause on or by the 20th day of May, 1892, and upon the
121 failure of said respondent, the Manhattan Trust Company, to so plead, answer, or demur to said bill of complaint, on or before the day named, the same will be taken as confessed against said Manhattan Trust Company.

It is further ordered that a copy of this order be served on the said Manhattan Trust Company by the U. S. marshal for the southern district of New York, who will make due return of said service to this court on or before the said 20th of May next.

Agreement of counsel to file answer in forty days.

In the circuit court of the United States, Birmingham, Ala.

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| UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY | | |
| et als. | | |

In this cause it is agreed that respondents, The Tennessee and Coosa Railroad Company, and The St. Louis, Nashville and Chattanooga Railway, and S. D. McKinney, Agrippa Scott, Robert Colquitt, Louis Wyeth, and S. K. Rayburn, shall have forty days from this date to file their answers in this cause, and it is further agreed that, unless said answers are filed on or before said date, that the clerk of this court shall, without further notice, issue a decree pro confesso against each and all of said respondents failing to answer by or on said day.

(Signed)

R. C. BRICKELL,
Solicitor for Respondents,
By D. SEMBLE.

APRIL 2, 1892.

MEMO.—S. D. McKinney, Agrippa Scott, Robert Colquitt, Louis Wyeth, and S. K. Rayburn, not having been named in the bill of complaint in this cause as parties thereto, no decree pro confesso is entered against them, and the district attorney does not require it to be done.

N. W. TRIMBLE, *Clerk.*

(Endorsed:) Filed April 2, 1892. N. W. Trimble, clerk.

Minute entry of April 2, 1892.

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| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD COM- pany et als. | | |

In this cause the counsel produce and file in open court an agreement in writing, concurred in by the United States attorney, that the Tennessee and Coosa Railroad Company, and the St. Louis, Nashville and Chattanooga Railway, and S. D. McKinney, Agrippa Scott, Robert Colquitt, Louis Wyeth, and S. K. Rayburn shall have forty days from this date to file their answer in this cause; and it is further agreed that, unless said answers are filed on or before said date, that the clerk of this court shall, without further notice, enter a decree pro confesso against each and all of said respondents failing to answer by or on said day, April 2, 1892.

It is hereby ordered that said agreement stand, and is hereby made the order of the court in said cause.

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| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD COM- pany et als. | | |

In this cause it is ordered, on motion of complainant's solicitor, that an alias subpoena in equity issue for Solomon Beginfield and J. W. Jones.

123 *The answer of the Manhattan Trust Company to the bill filed by the United States of America against this respondent and others, in the circuit court of the United States for the southern division of the northern district of Alabama.*

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| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY et als. | | |

This respondent saith, in answer to said bill:

That, of the matters and things therein alleged, it has no knowledge, information, or belief. That it has not any interest therein. Of the said lands in said bill mentioned, respondent has not now, and never had, possession, and never claimed them, or any part or parcel of them, and respondent here now disclaims all right, title, claim, or interest in and to said lands, or any part thereof, and here now renounces any and all claim, right, title, or interest which it may be supposed to have in and to said lands, or any part thereof; and now respondent, having answered said bill, prays to be hence dismissed, with costs.

THE MANHATTAN TRUST COMPANY,
By OSCAR R. HUNDLEY, *Attorney.*

(Endorsed:) Filed May 27, 1892. N. W. Trimble, clerk.

The answer of the Nashville, Chattanooga & St. Louis Railway to the original bill filed by the United States of America against this respondent and others, in the circuit court of the United States for the southern division of the northern district of the State of Alabama.

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| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY et als. | | |

124 This respondent, now, and at all times, saving and reserving all just exception to the errors, imperfections, and insufficiencies on the face of said bill apparent, in answer to so much thereof as respondent is advised it is material to answer, saith:

As respondent is informed and believes, the facts stated in the paragraphs of said bill numbered from one to six, inclusive, are true. The averments of the matters of law in the seventh paragraph of said bill are not admitted, but are submitted to the court for decision. Respondent does not know, and has no information or belief, as to whether any of the lands described in paragraph one and Exhibit A to said bill were or were not opposite to and coterminous with any portion of said Tennessee & Coosa Railroad which was constructed and completed at the date of the passage of the act of Congress approved September 29, 1890.

In answer to the eighth and ninth paragraphs of said bill, respondent saith, that such parties named therein who hold under purchases from S. D. McKinney, Agrippa Scott, Robert Scott, Louis Wyeth, S. K. Rayburn, and Robert Colquitt, do hold and claim the lands they are respectively alleged to hold and claim under purchases and conveyances from said Tennessee & Coosa Railroad Company. Such purchases were for the value of the said lands, paid in money to the said Tennessee & Coosa Railroad Company. And such purchases and the conveyances of said lands were made in good faith, years before the passage of the said act of Congress of September 29, 1890.

The said lands are within six miles of the line of the railroad of said Tennessee & Coosa Railroad Company, as it has been surveyed and definitely fixed and located prior to the grant of said lands to said company by the State of Alabama, and are parts of the first hundred and twenty sections granted to the State of Alabama by the act of Congress of June 3, 1856, and by the State granted to said Tennessee & Coosa Railroad Company. And respondent submits that the title to said lands is unaffected by the act of Congress of September 29, 1890. As to the other parties and lands in said paragraph mentioned, respondent is not informed, does not know, and can not say whether or not they are in possession of and claim the land it is alleged they severally and respectively claim and possess.

125 In answer to the paragraph of said bill numbered ten, respondent saith: That saving and excepting the averments thereof, as to the sales and conveyances of the Tennessee & Coosa Railroad Company to the defendant, Hugh Carlisle, as respondent is informed and believes, and on such information and belief states, the allegations of said paragraphs are untrue. The said conveyances to said defendant Carlisle were made by said company to pay a debt justly due and owing him from said company,

for monies paid, laid out and expended by him for said company, and for work and labor done and performed by him for said company in the construction of its line of railroad, hence it is not true that said defendant Carlisle holds said lands under any trust, secret or otherwise, for said Tennessee & Coosa Railroad Company, or any of its stockholders. And in further answer to said paragraph, respondent, having examined the answer of said defendant Carlisle, refers to and adopts the same as its further answer to said paragraph.

In answer to paragraph No. 11 of said bill, respondent saith: That it does not claim any right, title, or interest in any of said lands, other than the roadbed and right of way of said Tennessee & Coosa Railroad Co., consisting of a strip of land 100 feet wide; it may pass through said land, together with the switches and turnouts therewith connected, and the lands on which the section houses and depots of said railway are located, and this is claimed by a purchase and conveyance of and from said Tennessee & Coosa Railroad Company; and as to all other of said lands, respondent here and now disclaims all right, title, claim, or interest. The respondent and said Manhattan Trust Company each reside without the State of Alabama. Whether the other defendants to said bill are in possession of any of said lands, except as hereinbefore stated, is unknown to this respondent.

As to the matters and things alleged in the thirteenth, fourteenth, fifteenth, and sixteenth paragraphs of said bill, respondent has no knowledge, information, or belief. If by the sixteenth paragraph of 126 said bill it is intended to allege that this respondent has at any time committed, or caused to be committed, any waste or trespass on the said lands, the allegation is untrue.

And now respondent, having fully answered said bill, prays to be here dismissed with costs.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,
, President.

[SEAL.]

O. H. AMBROSE, *Secretary.*

(Endorsed:) Filed May 27, 1892. N. W. Trimble, clerk.

Alias subpoena in equity.

The President of the United States of America to the marshal for the northern district of Alabama, greeting:

You are hereby commanded, as you have heretofore been, to summon Solomon Beginfield and J. W. Jones, who are residents each and citizens of the southern division of the northern district of Alabama, if to be found in your district, that they, laying aside all excuse, appear personally at the office of the clerk of the circuit court of the northern district of the State of Alabama, southern division, in the city of Birmingham, in said district, on the rule day, to be held on the first Monday in July, 1892, next, to answer, plead, or demur to the bill of complaint exhibited in said circuit court by the United States of America, complainant, against the Tennessee & Coosa Railroad Company, a corporation created by and existing under the laws of the State of Alabama, and a citizen of the northern division of the said northern district of Alabama; and the Nashville, Chattanooga & St. Louis Railway Company, a corporation chartered

under the laws of the State of Tennessee; the Manhattan Trust Company, a corporation chartered by and existing under the laws of the State of New York; and Hugh Carlisle, who is a resident citizen of the county of Marshall, in the said northern division of the northern district of Alabama; W. H. McCord, Wm. Curry, W. T. McCord, J. T. Hambrick, W. R. Frazier, Mrs. S. S. Fletcher, Joseph J. Pugh, W. A. Darnell, John W. Darnell, W. W. Harper, W. A. J. Mathews, W. F. Stone, J. B. Hopkins, W. B. Hayes, N. W. West, W. H. Haynes, John J. Patterson, James P. Stevenson, B. C. Bartlett, Asa Young, C. T. Norton, W. L. Lowe, E. J. Barksdale, Walter Davis, John Smith, Willis W. Curry, Benjamin Scott, James S. Johnson, A. J. Fletcher, B. O. Scott, each and all of whom are resident citizens of the northern division of the said northern district of Alabama; Jasper M. Dixon, John K. Roe, Madison Cerns, John Eason, David Scott, John H. Fletcher, John Pepper, Bethel L. Leith, J. P. Scott, J. J. Smith, J. W. Whitt, T. J. Bates, Joe Slaton, E. A. Toney, W. H. Baker, Thomas Cassells, Lindsey Holland, Solomon Beginfield, Solomon P. Ledbetter, Stephen L. Rogers, George W. Bruce, J. H. Bruce, John Mizzell, William Avery, John Collier, W. W. Elkins, William Rhodes, Tom Simpson, Jack Keigle, T. B. Thrasher, B. F. Burns, G. F. Amons, Lewis Whitt, Anderson Whitt, Dock Gilbreath, J. W. Jones, R. W. Clay and A. M. Gilbreath, all of whom are residents each and citizens of the southern division of the northern district of Alabama, defendants; a copy of which will be furnished on application to the clerk. Herein, fail not, and have you then and there this precept, with your return thereon endorsed.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 23d day of May, in the year of our Lord, one thousand eight hundred and ninety-two, and of American Independence 116th year.

Attest:

[SEAL.]

N. W. TRIMBLE,
Clerk U. S. Circuit Court.

Issued 23rd day of May A. D. 1892.

MEMO—The defendants are to enter their appearance and to file their answers or demurrers to said bill, in the clerk's office, on or before the day on which this writ is returnable—otherwise a decree pro confesso may be entered.

The marshal is required to execute this writ twenty days before the return day thereof.

(Marshal's return endorsed:)

Received at marshal's office this 25th day of May, 1892.

A. R. NIXINGER, *U. S. Marshal.*

Executed this 4th day of June, 1892, by J. N. Holsonback.

Delivered a copy of the within to Solomon Beginfield; J. W. Jones not found.

A. R. NIXINGER, *U. S. Marshal,*
Per J. N. HOLSONBACK, *Deputy.*

Cost \$4.

(Endorsed:) Filed in clerk's office, June 7, 1892. N. W. Trimble, clerk.

Decree pro confesso.

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| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD | | |
| Co. et als. | | |

At rules, July 4, 1892.

In this cause, it appearing that the defendant, the Tennessee & Coosa Railroad Company, was duly served with a subpoena commanding it to appear at the rules day in January, 1892 (said subpoena having been served on it more than twenty days prior to the rules day aforesaid), and

it further appearing that on the first day of February, 1892, an order was made and entered, allowing said defendant thirty days

from said last-named date to plead, answer, or demur, and it further appearing that on April 2, 1892, said defendant, with other defendants, by their solicitors, filed an agreement, wherein they agreed "that they shall have forty days from this date to file their answers in this cause, and it is further agreed that unless said answers are filed on or before said date, that the clerk of this court shall without further notice enter a decree pro confesso against each and all of said respondents failing to answer on said day," which said agreement was, at the time, made the order of this court, and it further appearing that said defendant, the Tennessee & Coosa Railroad Company, has failed to file its answer, as by said order it was authorized and required to do, and have failed to plead, answer, or demur, as by law and the rules of this court it was bound to do: It is therefore, on motion of the solicitor for complainant, ordered, adjudged, and decreed that the matters and things set forth in the bill of complaint filed in the above-stated cause be taken as confesses by said defendants, the Tennessee & Coosa Railroad Company, and that a final decree may hereafter be taken and entered against it in accordance with law and the rules of this court.

N. W. TRIMBLE, *Clerk.*

W. H. H. MILLER,

U. S. Attorney-General, Solicitor for Complainant.

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Decree pro confesso.

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|---------------------------------------|---|--------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD COM- | | |
| pany, et als. | | |

At rules July 4, 1892.

In this cause, it appearing that the defendant, Solomon Beginfield, was duly served, on the 4th day of June, 1892, with an alias subpoena, commanding him to appear at the rules day in July, 1892, the same being the 4th day of July, 1892 (said subpoena having been served on him for more than twenty days prior to the rules day aforesaid), and it further appearing that said defendant having failed to appear, as commanded by said subpoena, and as by law and the rules of this court he was bound to

do; it is, therefore, on motion of the solicitor for complainant, ordered, adjudged, and decreed, that the matters and things set forth in the bill of complaint filed in the above-stated cause be taken as confesses by the said defendant, Solomon Begginfield, and that a final decree may be hereafter taken against said defendant, according to law and the rules of this court.

This 4th day of July, A. D. 1892.

N. W. TRIMBLE, *Clerk*.

W. H. H. MILLER,

United States Attorney-General, Solicitor for Complainant.

131

Order of examiner as to taking of testimony.

In the circuit court of the United States for the southern division of the northern district of Alabama.

THE UNITED STATES

vs.

THE TENNESSEE AND COOSA RAILROAD COMPANY et als.

No. 40. In equity.

It is ordered that the counsel of either party, desiring to take testimony in this cause, give the opposite party or its solicitor five days' notice of the time and place of the examination of its witnesses.

N. W. TRIMBLE, *Examiner*.

AUGUST 15, 1892.

(Endorsed :) Filed August 15, 1892. N. W. Trimble, clerk.

132

Notice of taking testimony.

In the circuit court of the United States for the southern division of the northern district of Alabama.

THE UNITED STATES

vs.

THE TENNESSEE AND COOSA RAILROAD COMPANY et als.

No. 40. In equity.

To Hon. L. E. PARSONS,

United States Attorney, Northern District of Alabama:

Take notice that, on the 8th day of September, 1892, the respondent, Hugh Carlisle, in the case of the United States of America *vs.* Tennessee & Coosa Railroad Company et als., pending in the circuit court of the northern district of Alabama, at Birmingham (No. 40, Equity Docket), will proceed to examine orally, as a witness on behalf of said respondent, Hugh Carlisle, before N. W. Trimble, esq., the examiner of said court, at his office in Birmingham, at which time and place you are notified to be present if you desire to do so.

GOODHUE & SIBERT,

SMITH & LOWE,

Solicitors for Carlisle.

AUGUST 31, 1892.

(Return of marshal endorsed:)

Received in United States marshal's office September 1, 1892.

A. R. NIXINGER, *United States Marshal*.

Executed by delivering a copy of within notice to L. E. Parsons, jr., at Birmingham, Ala., September 1, 1892.

A. R. NIXINGER, *United States Marshal*,
By J. W. BRUCE, *Deputy*.

Fees, 82.

(Endorsed:) Filed in clerk's office September 1, 1892. N. W. Trimble, clerk.

133

Petition of Hugh Carlisle for modification of injunction.

In the circuit court of the United States for the southern division of the northern district of Alabama.

UNITED STATES

vs.

TENNESSEE AND COOSA RAILROAD COMPANY, } No. 40. In equity.
et als. }

Now comes Hugh Carlisle, one of the respondents in above cause and presents this, his petition in said cause.

Petitioner respectfully represents that on the 20th day of November, 1891, an injunction pendente lite issued out of this honorable court, restraining and enjoining petitioner and others from removing or causing to be removed any timber, logs, coal, iron ore, manganese or other mineral or ore of value, from or off any of the lands described in the original bill in this case, or from going or trespassing on said land, or cutting timber thereon, or mining coal thereon, and from collecting, receiving or taking possession of any money, property or thing of value as purchases, money, rent, income or profit of or from any of the lands described in said bill, and the exhibits thereto attached.

And petitioner avers that the lands described in Exhibit B to said original bill are lands that lie within the conflicting limits of the grants to the Tennessee & Coosa Railroad Company, and the Alabama & Chattanooga Railroad Company, and these lands are also opposite to and coterminous with that portion of the Tennessee and Coosa Railroad Company which was completed and in operation on the _____ day of September, the date of the approval of what is known as the "forfeiture act." That by the terms of the order made by this honorable court the receiver appointed in this case was not authorized to take possession of said land, or to take any steps in regard thereto, nor has the said receiver attempted to take possession of said land. That as petitioner is informed and
134 believes the Government is not interested in these lands, and in no event could the United States ever acquire title to the lands by the proceedings which are pending in this court, or in any other manner than by purchase or condemnation, and the contest as to these lands is entirely between petitioner, as the grantee of the Tennessee & Coosa Railroad Company, and the grantees of the Alabama & Chattanooga Railroad Com-

pany. That the Government has certified these lands to the said Alabama & Chattanooga Railroad Company, subject only to such rights as the Tennessee & Coosa Railroad Company, and its grantees, may have therein. That portion of said lands are in the possession of irresponsible parties, who are daily taking therefrom valuable timber and ores. That the west half of southeast quarter and east half of southwest quarter and southwest quarter of southwest quarter and west half of northeast quarter of section 5, township 11, range 6 east, is in the possession of the Etowah Mining Company, who have already, in utter disregard to petitioner's title to an undivided moiety in said lands, taken large quantities of ore from said land, and continue to mine ore thereon. That on the 4th day of May, 1891, petitioner commenced his action of ejectment in the city court of Gadsden to recover the possession of an undivided one-half interest in said lands, and also the rent and profits of said lands, while wrongfully in the possession of the defendants in said action. That petitioner has been and is prevented from prosecuting his said action of ejectment by the pendency of said injunction.

That during the months of March and April, 1889, petitioner sold to one Obal Christopher his undivided one-half interest in another portion of the lands described in Exhibit B to original bill. That petitioner executed his quit-claim deed to said Obal Christopher, and received from said Christopher his promissory notes for a large amount in part payment for said land.

That in the month of February, 1891, petitioner commenced proceedings in the chancery court of Etowah County, Ala., to enforce collection of said notes. That said proceedings are still pending, and have been stayed by reason of said injunction. That there is great danger that said Christopher will become insolvent. That petitioner is solvent, and

abundantly able to respond to any decree the complainant in this
135 cause may obtain against him. That petitioner is advised and believes that the United States can not be injured by the modification of the injunction as prayed for in this petition. And petitioner now prays that said injunction may be modified by adding thereto a clause providing that the said injunction and restraining order shall not apply to any portion of the lands described and set forth in Exhibit B to said original bill. And as in duty bound petitioner will ever pray, etc.

AMOS E. GOODHUE,

Solicitor for Petitioner.

UNITED STATES OF AMERICA,

Northern District of the State of Alabama:

Before me, N. W. Trimble, clerk of the circuit court of the United States for the district aforesaid, personally appeared Hugh Carlisle, who, being duly sworn, deposes and says that the averments of fact in the foregoing petition are true.

HUGH CARLISLE.

Subscribed and sworn to before me this 10th day of September, 1892.

[SEAL.]

N. W. TRIMBLE, *Clerk.*

(Endorsed :) Filed September 10, 1892. N. W. Trimble, clerk.

136 *Notice to district attorney of petition of Hugh Carlisle to modify injunction.*

In the circuit court of the United States for the southern division of the northern district of Alabama.

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| UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY, | | |
| et als. | | |

To Hon. L. E. PARSONS, *District Attorney*:

Take notice, that on the 14th day of September, 1892, a petition on the part of Hugh Carlisle will be presented in above case asking a modification of the injunction in said cause, as will appear by reference to the petition of said Carlisle on file.

SEPTEMBER 10, 1892.

AMOS E. GOODRUE,
Solicitor for Carlisle.

Acceptance of service endorsed.

I hereby accept service of within notice this 10th day of September, 1892, but do not waive any time to which the United States is entitled by law or rules of the court.

L. E. PARSONS,
United States Attorney.

(Endorsed:) Filed September 10, 1892. N. W. Trimble, clerk.

137 *Minute Entries of September 30, 1892.*

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|--------------------------------------|---|--------------------|
| UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY | | |
| et als. | | |

By agreement of counsel, it is ordered that this cause be set down for hearing at Montgomery, Ala., on November 12, 1892, on the petition of Hugh Carlisle for modification of the injunction heretofore issued in said cause.

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| UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY | | |
| et als. | | |

Upon motion of the complainant's solicitor it is ordered and adjudged that said complainant may amend its bill of complaint by striking out the name of the defendant, J. W. Jones, he not having been served with the process of subpoena or alias subpoena which have heretofore been issued in this cause and returned by the marshal "not found."

In the circuit court of the United States, southern division of the northern district of Alabama.

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|---|---|--------------------|
| UNITED STATES OF AMERICA | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD COM- pany, Hugh Carlisle, et als. | | |

Now comes the Tennessee and Coosa Railroad Company, respondent in the above cause, and, answering the bill of complaint in said cause, says:

First. Respondent admits the allegations of the first, second, third, and fourth paragraphs of said bill.

Second. Respondent, answering the fifth paragraph of the original bill, admits the facts stated therein, except that respondent denies that it never became entitled, under said act, to said lands, or to the possession thereof; and respondent denies that, at the expiration of ten years from the date of the act of June 3, 1856, the said lands reverted to the United States.

Third. Respondent admits the allegations contained in the sixth paragraph of said bill.

Fourth. Respondent admits the facts stated in the seventh paragraph of said bill, but denies the statements contained in said paragraph that the United States became entitled to the possession of all the lands described in the fourth paragraph of the bill and Exhibit A on the 4th day of June, 1866, and to the possession of all the lands described in second paragraph of said bill and Exhibit B, so far as any part thereof were selected or approved to said Tennessee & Coosa Railroad Company; and respondent denies that the United States became entitled to recover the title to the possession of all said lands on the 4th day of June, 1866, so far as the Tennessee and Coosa Railroad is concerned.

139 Fifth. Respondent admits the allegations contained in the eighth and ninth paragraphs of said bill.

Sixth. Respondent admits that it executed the deeds to Hugh Carlisle which are referred to in the tenth paragraph of said bill. But respondent denies that, at the time said instruments were executed, it had no right, power, or authority to execute said instruments or to convey any right, title, or interest in or to said lands, and that its officers, agents, and directors well knew this fact. And respondent denies that it executed the said deeds with the intention of preventing the reversion of said lands to the United States. And respondent denies that, in truth and in fact, no money or other thing of value was paid therefor by said Carlisle, and that the whole transaction was merely a device to mislead and deceive, and for the purpose of enabling the said Hugh Carlisle to set up and claim that he held said lands as a purchase for value and in good faith from said railroad company. And respondent avers that said conveyances were made, and that the said lands were sold, for the purpose of aiding in the construction of said railroad, and that the entire consideration recited to have been paid for said lands was used in the construction of

said railroad. And respondent denies that said Hugh Carlisle is a purchaser mala fide, well knowing that said purchase was a violation of the act of June 3, 1856; and respondent avers that said Hugh Carlisle is a bona fide purchaser for value of said land. And respondent denies that said Carlisle, in truth and in fact, holds the said lands under a secret trust for respondent and the stockholders of respondent. And respondent denies that said Carlisle and his near relatives elected themselves, and others subject to their will, directors of said Tennessee & Coosa Railroad Company, and, by resolution of the board thus composed, caused the said conveyances, Exhibits D and E to the original bill, to be executed for the purpose of defrauding the United States out of said lands. And respondent avers that said Carlisle purchased said lands in good faith and paid for the same the consideration stated in said deed, as will hereinafter more fully appear.

140 Seventh. Respondent, answering the eleventh paragraph of said bill, says that subsequent to the execution of the deed to the defendant Carlisle, which are made exhibits to the original bill, and also subsequent to the sales made to other parties, which are hereinafter set forth, respondent executed a deed conveying all of the property and property rights to the defendant, the Nashville, Chattanooga & St. Louis Railway, who have, since the date of the execution of said deed, completed the railroad originally sought to be constructed by respondent, but respondent is informed and believes that said Nashville, Chattanooga & St. Louis Railway, not being willing to enter into this litigation, do not claim any interest in the lands which had not, prior to the date of their purchase, been conveyed by the Tennessee & Coosa Railroad Company. And neither the Manhattan Trust Company nor the Nashville, Chattanooga & St. Louis Railroad claim any interest in or to any portion of the lands which have been conveyed by the Tennessee & Coosa Railway Company to other parties.

Eighth. Respondent admits that the Nashville & St. Louis Railway and the Manhattan Trust Company are both nonresidents of Alabama, and that neither the Manhattan Trust Company nor the Nashville, Chattanooga & St. Louis Railway are in possession of any part of said lands. Respondent admits that the defendant Carlisle and other defendants named in the bill are in possession of some portions of said lands, but respondent denies that such defendants as are purchasers from respondent are trespassers on the lands purchased by them, and on the contrary avers that they are rightfully in possession of the lands so purchased by them.

Ninth. Respondent denies that it or any person claiming under it has ever engaged in committing any trespass or waste of any character upon any of the said lands; and respondent denies that complainant in original bill is entitled to recover any sum in damages from respondent.

Tenth. And further answering said bill, respondent says that it was incorporated and organized in 1844 for the purpose of building a railroad from a point on the Coosa River to Guntersville, or some point near Guntersville, on the Tennessee River. That after having obtained the grant made by Congress, in 1856, which is referred to in the bill, and also the act of the sixth biennial session of the general assembly of Alabama, respondent endeavored to build its road. That in 1859, respondent contracted with said defendant Carlisle

to build said road. That in 1860 respondent executed a mortgage upon its franchises and other property, and especially upon the lands granted to it by said act of Congress, to secure 400 bonds, each of the denomination of one thousand dollars, issued by respondent. That eleven of said bonds were pledged as collateral with said defendant Carlisle, to secure him for the amount due him for work done by him in building said road prior to 1861. That prior to the time the civil war arose, said defendant Carlisle had about four hundred hands on the road, and was progressing rapidly with the building of the same. The civil war ensued; a blockade was declared, and neither the said defendant, Carlisle, nor the officers of respondent, were able to proceed further in the construction of the road. That the iron and other materials to be used in the construction of the road had been bargained for, but could not be obtained by reason of the blockade. The interference of the war prevented the further progress of the road. After the war the building of the road was prevented by the financial distress prevailing in the country. In 1871 respondent made a conditional sale of said road to the East Alabama & Cincinnati Railroad Company. That the purpose of said sale was to insure the completion of said road. But the said East Alabama & Cincinnati Railroad Company only completed five miles of said road, between Gadsden and Attalla, and failed to carry the road any farther. That in 1885 respondent, after long litigation, regained possession of said road, and at once recommenced efforts to complete the same. That during the entire history of the road, since he first made a contract with respondent in 1859, said Carlisle has been active and indefatigable in his efforts to complete the said road. That in 1883, while the suit against the East Alabama & Cincinnati Railroad Company was still pending, the directors of the Tennessee & Coosa Railroad Company passed a resolution, as shown by following extract from minute book of respondent :

142 OFFICE OF TENNESSEE & COOSA RAILROAD COMPANY,
Guntersville, Ala., September 14, 1883.

The board of directors of the Tennessee and Coosa Railroad Company met pursuant to the call of the president of said company. Present, Louis Wyeth, president; M. Gilbreath, H. L. Miller, Hugh Carlisle, W. Seibold, and S. K. Rayburn, directors. The president, after calling the meeting to order, stated fully the object of the meeting. It was, therefore, on motion of Mr. Gilbreath, seconded by H. Miller, resolved that the action of Hugh Carlisle, in taking actual possession of the roadbed, right of way, franchises and property of the Tennessee & Coosa Railroad from Attalla to Guntersville, be fully authorized, ratified, confirmed, and approved by this board of directors. (Adopted.) And be it further resolved, that we do further ratify the action of said Hugh Carlisle in hiring hands and putting them to work in cutting the timber and clearing the roadbed or track on said road, and using any other effort he may deem necessary in order to take, retain, and hold the possession of said Tennessee & Coosa Railroad track or bed, and right of way, together with its franchise, subject at all times to the order of the board of directors of Tennessee & Coosa Railroad Company. (Adopted.) On motion of S. K. Rayburn, seconded by M. Gilbreath, it is resolved that we do nominate, constitute, and appoint Hugh Carlisle as the finan-

cial and constructing agent for the Tennessee & Coosa Railroad Company, thereby clothing him with full power and authority to construct, build, and equip said railroad and to put it in running order from Attalla to Guntersville, and for the purpose of investing him with full power and authority, the full intent and purpose of this resolution, we do authorize and empower him, the said Hugh Carlisle, to use any and all of the assets of the said Tennessee & Coosa Railroad Company, to carry out the full intent and meaning of this resolution, ratifying the same as fully as it is in our power to do. (Adopted.) It is further adopted by the said board of directors of said Tennessee & Coosa Railroad Company, and we agree to and with said Carlisle to pay him, out of the assets of said road, the original cost and expenses that he may incur in the construction, equipping, and

143 putting said road in running order, together with 20 per cent. in addition for superintending and advances made by him on cost of construction, equipping, and putting said road in running order. (Adopted.) It is further resolved that the said Hugh Carlisle hold and retain a lien on said railroad and its franchises, both real and personal, until said costs and expenses incurred by him, the said Hugh Carlisle, are fully paid off and discharged, together with the 20 per cent., by said board of directors, agreed to be paid over and above the costs and expenses of constructing and equipping said road. (Adopted.) And, on motion of W. Seibold, seconded by Henry L. Miller, it is resolved that the indebtedness of the Tennessee & Coosa Railroad Company to Hugh Carlisle, for work done on said road, during the years 1860 and 1861, are just and equitable, and are, by this resolution, revived and renewed as against said company; and it is further resolved that all other claims and demands that have heretofore been allowed to said Carlisle by the resolution of the board of directors of said Tennessee & Coosa Railroad Company, be and the same is hereby revived and renewed against said railroad company from this date, viz: September 14, 1883, together with the interest that has accrued thereupon up to date. (Adopted.)

Eleventh. That as soon as respondent regained possession of said road, said defendant Carlisle bent every energy to the task of pushing forward the building of said road; that he expended in this work large sums of his own private resources. That respondent had no money and no other resources except said lands, and had no means of constructing the road except as the same were supplied by the defendant Carlisle. That during the year 1886 the road was completed and put in operation a distance of ten and 22-100 miles, as far as Littleton. That during all this time the money which was due said defendant Carlisle for work done on the road prior to 1861 had never been paid. That the entire indebtedness to defendant Carlisle amounted to eighty-five thousand fifty and two one hundredth dollars. That about forty-seven thousand dollars of this amount was due for work done prior to 1861. That said Carlisle's account

was submitted to the board of directors of respondent's company
144 and audited and approved by them. That in February, 1887, the directors of the Tennessee & Coosa Railroad Company, desiring to pay said indebtedness to said Carlisle, and respondent's company having no other assets out of which payment could be made, offered to convey the lands described in Exhibit E to the original bill in payment pro tanto of said Carlisle's account, at two dollars and a half per acre, that being

the full value of the land at the time. That said Carlisle was at first unwilling to accept said land in payment for his work, but finally agreed to accept the conveyance of twenty-three thousand seven hundred and thirty-nine and 51-100 acres of said land at two dollars and a half per acre. That in pursuance of a resolution of the board of directors, respondent conveyed said land absolutely and without any trust or reservation whatever to said Carlisle. That the consideration for this conveyance was money which was due said Carlisle for work done by him as a contractor in the construction of said road under a contract with respondent, and the consideration was applied exclusively in the construction of said road and to no other purpose whatever. That there was no collusion between respondent and defendant Carlisle to defraud the United States or any one; nor was there any reservation or secret trust about the transaction. The said transaction was in fact, what it purported to be on its face, a bona fide sale for a valuable consideration of the said lands. And respondent believing and being advised by its counsel, learned in the law, that it had a good right to convey said lands to said Carlisle in payment for said work, warranted the title to said Carlisle as will appear by reference to said deed. That after receiving a conveyance to said lands, there still remained twenty-six thousand four hundred and one and 27-100 dollars due to said Carlisle. That on the 2nd day of April, 1888, respondent also under authority, properly given by the board of directors, conveyed to said Carlisle about sixteen thousand acres of land, which is particularly described in Exhibit D to the original bill, at the price of one and 25-100 dollars per acre. That this was, at the time, the full value of the interest which respondent owned in said lands. That these lands lay

within the conflicting limits of the grants to the Alabama & Chattanooga and the Tennessee & Coosa Railroad Company respectively, 145 and respondent only owned an undivided moiety in said lands. That this land also was conveyed to said Carlisle absolutely without any secret trusts or reservation whatever. That the consideration of this conveyance also was the payment of money due to said Carlisle for work done by him as a contractor in the construction of said road, and the consideration for this conveyance also was applied exclusively in the construction of said road, and to no other purpose whatever.

Twelfth. That at sundry and divers times respondent, for the purpose of raising funds to complete said road, in good faith, sold portions of the land granted to respondent by the Congressional act of June 3, 1856. That in most instances the land was sold to poor people, who wanted the land for use as homesteads for themselves and families. The sales were usually made on a credit. The notes of the purchasers were taken and were placed, and still remain, in the hands of defendant Carlisle, as collateral for the balance due him, as hereinbefore set forth. That a very small amount has been paid upon said notes so given for purchase money. That in nearly every instance the vendee of the company, or his grantee, is in possession of the lands so sold by the company. That in most instances the vendees of the company, although they have never surrendered possession to respondent, from whom they acquired possession, are declining to pay the purchase money of said lands, and endeavoring to obtain a title thereto from the United States.

Thirteenth. That all of the lands described in Exhibit E to the original bill are within the limits of the lands granted and approved to respond-

ent as a part of the first one hundred and twenty sections, and are opposite to and coterminous with the first twenty miles of the said Tennessee and Coosa Railroad, as shown by the map of the definite location of said railroad, which was duly filed in accordance with the terms of the act of Congress approved June 3, 1856. That these lands are included in the lands which, by the terms of said act of Congress, respondent was authorized to sell in advance of the construction of any portion of the road. That on the 23rd day of June, 1860, 146 all of the lands in controversy in this suit were approved and certified to respondent, under the terms of said act of Congress, by the Secretary of the Interior, as shown by original list, which will be introduced in evidence on the trial of this cause.

And now having fully answered all the allegations of said original bill of complaint, respondent prays that it may be discharged therefrom with its lawful costs in this behalf expended, and as in duty bound, it will ever pray, etc.

THE TENNESSEE AND COOSA RAILROAD COMPANY,
By OSCAR R. HUNDLEY, *Attorney.*

R. C. BRICKELL,

OSCAR R. HUNDLEY,

Solicitors for Respondent Tenn. and Coosa R. R. Co.

(Endorsed:) Filed as of November 14, 1892. N. W. Trimble, clerk.

147 *Order setting aside decree pro confesso against T. & C. R. R. Co. and allowing its answer to be filed.*

In the circuit court of the United States for the southern division of the northern district of Alabama.

THE UNITED STATES

vs.

THE TENNESSEE AND COOSA RAILROAD
Company et als.

No. 40. In equity.

In this cause, upon application of the respondent, The Tennessee and Coosa Railroad Company, the decree pro confesso heretofore taken on, to wit, the 4th day of July, 1892, against said Tennessee and Coosa Railroad Company, is set aside, and the respondent allowed to make answer, which is accordingly done in open court this 14th day of November, 1892.

(Signed)

JOHN BRUCE, *Judge.*

(Endorsed:) Received and filed November 15, 1892. N. W. Trimble, clerk.

Order modifying injunction.

In the United States circuit court for the southern division of the northern district of Alabama.

THE UNITED STATES

vs.

TENNESSEE AND COOSA RAILROAD COM-
pany et als.

No. 40. In equity.

In above-entitled cause, upon the application of Hugh Carlisle, 148 respondent, to modify the injunction heretofore granted in this

cause, it is ordered that said application be granted, and the said injunction is accordingly modified by adding thereto the following clauses:

This injunction and restraining order shall not apply to any portion of the lands described and set forth in Exhibit B to original bill. But this modification of the said injunction is granted subject to such further orders of this court as may be necessary in the further progress of this cause, and shall not operate to prejudice the right of any party to this suit upon final decree.

(Signed)

JOHN BRUCE, *Judge*.

NOVEMBER 14, 1892.

(Endorsed:) Received and filed November 16, 1892. N. W. Trimble, clerk.

149 *Order in reference to building side track, depot, etc.*

In the circuit court of the United States for the southern division of the northern district of Alabama.

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| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| HUGH CARLISLE, ET ALs. | | |

In this cause it appearing, to the satisfaction of the court, that for the proper maintenance and operation of the Tenn. & Coosa R. R. it is necessary to construct side track, depot, and section houses on section 29, township 10, range 5 east, therefore it is ordered, adjudged, and decreed by the court that the receiver heretofore appointed shall in no wise assume control of or in any manner interfere with the lands in said section 29, township 10, range 5 east, upon which the side track, depot, and section houses of said Tennessee & Coosa Railroad may be erected, or in course of erection, or which may be necessary for said side track, depot, and section houses.

(Signed)

JOHN BRUCE, *Judge*.

DECEMBER 5, 1892.

(Endorsed:) Received and filed December 6, 1892. N. W. Trimble, clerk.

150 *Order for receiver to make report.*

In the circuit court of the United States for the southern division of the northern district of Alabama.

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| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY, | | |
| Hugh Carlisle, et als. | | |

In this cause comes Lewis E. Parsons, jr., United States attorney, who appears for and on behalf of the complainant, and shows to the court that Owen T. Holmes, the receiver in this cause, took possession of the lands

as directed in the order of this court, and under said order, rented many of said lands in different lots and parcels to different persons for the year 1892, taking from each of such persons renting said land their notes, describing the lands rented and the amount agreed to be paid by each of them for the lands so rented.

And the said United States attorney further shows to the court that many of the persons renting said lands, as stated, have occupied, cultivated, and had the use of the same for the year 1892, under said contracts of renting, and now fail and refuse to pay or secure said rents or give possession of the same to said receiver, and many others that rented and have paid the rents of said lands for the year 1892 now refuse to again rent said lands for the year 1893 or to give possession of them to said receiver.

It is therefore ordered, when the receiver makes and files in this court sworn statements or reports giving the name of any person or persons renting lands of him, as receiver, for the year 1892, with a description of the land rented and the amount of unpaid rent past due, and that such person or persons have failed or refused to pay or secure said rents and refuse to surrender possession thereof to him on demand, or that such person or persons have paid the rent for 1892 and
151 refuse to rent said land for the year 1893, and refuse to surrender possession thereof to him on demand, that the clerk of this court issue a writ of assistance, or writ in the nature of a writ of assistance, directed to the United States marshal of this district, commanding and directing him to eject such person or persons from said lands so held by him or them, and to place the receiver in this cause in the possession of the land described in said writ. And the said United States marshal is ordered to execute said writ, issued under and in accordance to this order, without delay, and to make return to this court how he has executed the same.

It is further ordered, that the receiver, on being placed in possession of the said lands, rent the same for the year 1893. Provided this order shall not be held to prevent any of the parties affected thereby from coming into this court and contesting the account and claim made by the receiver.

(Signed)

JOHN BRUCE, *Judge*.

MARCH 20, 1893.

(Endorsed:) Filed March 20, 1893. N. W. Trimble, clerk.

Minute entry of March 21, 1893.

| | | |
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| UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE & COOSA RAILROAD COMPANY, | | |
| Hugh Carlisle, et als. | | |

Upon motion of the solicitor for Hugh Carlisle, one of the respondents in the above-entitled cause, leave is hereby given him to file an amendment to his answer, as per amendment this day filed.

In the circuit court of the United States, southern division of northern district of Alabama.

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| UNITED STATES | } |
| <i>vs.</i> | |
| TENNESSEE & COOSA RAILROAD COMPANY, Hugh Carlisle, et als. | |

Now comes Hugh Carlisle and, by leave of the court first had and obtained, amends his answer to original bill by adding to the fourth paragraph of said answer, at the conclusion of said paragraph, the following words, viz: "And the said lands are within six miles of line of definite location of the Tennessee & Coosa Railroad Company, as shown by map of definite location, which was duly filed in accordance with the provisions of said act of June 3, 1856, during the month of December, 1858, and the said lands are within the primary granted limits of the grant ensuing to the benefit of said Tennessee & Coosa Railroad Company, under the provisions of said act."

And respondent Carlisle also amends his said answer by adding to the fourteenth paragraph of said answer, at the conclusion of said paragraph, the following words, viz: "And respondent Carlisle avers that at sundry and divers times the said Tennessee & Coosa Railroad Company, for the purpose of raising funds to complete said railroad, in good faith, sold portions of the land granted to respondent Tennessee & Coosa Railroad Company by the said act of June 3, 1856. And respondent hereto attaches and prays to be taken as a part of this answer a list showing the date of sale, the person to whom the sale was made, and the description of the land. And respondent designates and identifies said list as Exhibit A to his answer. That said lands so sold are within the limits of the lands granted, approved, and certified to the Tennessee & Coosa Railroad Company as a part of the first one hundred and twenty sections and are opposite to the first twenty miles of said Tennessee & Coosa Railroad, as shown by map of definite location, and are included in the lands which by said act of Congress the Tennessee & Coosa Railroad

Company was authorized to sell in advance of the construction
 153 of any portion of the road. That the sale in each instance was at the price of two and 50-100 dollars per acre. That in most instances the land was sold to poor people who wanted the land for use as homesteads. The sales were usually made on a credit. The notes of the purchasers were taken and were placed in the hands of the respondent Carlisle as collateral security for balance due him, as above set forth. That, except in a few instances, where Exhibit A shows certain notes to have been paid, said purchase-money notes still remain in the hands of said Carlisle as collateral security for said debt. That a very small amount has been paid upon said notes so given for purchase money. That the said vendees of the company or their grantees are in each instance in possession of the land so sold by the company. And respondent Carlisle also avers that of the lands described in Exhibit E to original bill he, during the years 1887 and 1888, sold for valuable consideration,

to purchasers, in good faith, who paid for the same and received respondent's warranty deed to the same, the following lands, viz:

To A. J. Fletcher, northwest quarter northwest quarter and the northeast quarter northwest quarter and north half southeast quarter northwest quarter and north half southwest quarter northwest quarter, section 15, township 9, range 4 east.

To S. D. McKinney, southwest quarter southwest quarter and southeast quarter southwest quarter and southwest quarter southeast quarter, section 33, township 8, range 4 east.

To John W. Shipp, southeast quarter northeast quarter, section 11, township 8, range 4 east.

To R. R. Colquitt, southwest quarter northwest quarter, section 21, township 8, range 4 east.

To L. D. Colquitt, northwest quarter southwest quarter, section 21, township 8, range 4 east.

To Robert Colquitt, west half southeast quarter, section 21, township 8, range 4 east.

To Jack Farmer, southeast quarter southwest quarter, section 21, township 8, range 4 east.

To Thomas Riddle, northeast quarter northwest quarter, section 21, township 8, range 4 east.

154 To Emin Snods, northwest quarter northeast quarter, section 21, township 8, range 4 east.

To Henry L. Miller, north half southwest quarter, section 19, township 8, range 4 east.

To Agrippa Scott, south half southwest quarter, section 3, township 9, range 4 east.

To W. H. Haynes, southeast quarter northwest quarter, section 11, township 9, range 4 east.

To W. B. Rhodes, northeast quarter southeast quarter, section 33, township 8, range 4 east.

To W. H. McCord, northeast quarter southwest quarter, section 11, township 9, range 4 east.

To W. W. Harper, northwest quarter southeast quarter, section 25, township 8, range 3 east.

To Jefferson Hewitt, northeast quarter southeast quarter and southeast quarter northeast quarter, section 3, township 9, range 4 east.

To A. M. McLeod, northeast quarter, section 15, township 9, range 4 east.

And respondent avers that of the lands described in Exhibit D to original bill, the following have been, during the years 1887 and 1888, sold by respondent Carlisle and quitclaim deeds executed to the following parties:

To Walter E. Knox, southeast quarter northwest quarter, section 1, township 12, range 5 east.

To Jasper N. Hendricks, northwest quarter northwest quarter, section 27, township 11, range 6 east.

To Thos. Wathim, south half northeast quarter north half southeast quarter east half southwest quarter, section 29, township 11, range 5 east.

To Jacob Letson, southeast quarter northwest quarter, section 29, township 11, range 6 east.

To Joseph R. Hughes, southeast quarter southeast quarter, section 29, township 11, range 6 east.

To Christopher & Stewart, fraction section 3, township 13, range 5 east.

155 To Sam Henry, east half northwest quarter southeast quarter west half northwest quarter southeast quarter, section 31, township 11, range 6 east; also, northeast quarter southwest quarter, section 7, township 12, range 5 east.

To W. J. Sebart, fraction four (4) in northwest quarter of section 7, township 12, range 6.

To J. Whisenant, northwest quarter southwest quarter, section 31, township 11, range 6.

To R. V. Wilson, northeast quarter southwest quarter, section 31, township 11, range 6.

To Franklin R. Whitt, northwest quarter northwest quarter southwest quarter northwest quarter, section 25, township 11, range 5 east.

To P. S. Fitzgerald, north half northwest quarter, section 35, township 11, range 5 east.

To Obal Christopher, west half section 7, and northwest quarter southeast quarter section 7, township 12, range 6 east; also, southwest quarter northeast quarter southeast quarter east half southwest quarter northwest quarter southwest quarter, section 1, township 12, range 5 east.

To James McClendon, northeast quarter northwest quarter, section 13, township 11, range 5 east.

And respondents aver that each and all of said parties, in good faith and for a valuable consideration, purchased the lands, to which they received warranty or quitclaim deeds, respectively, as above set forth; that each of said purchasers from respondent went into possession of said tract sold to him and remained in possession thereof, either by himself or through his grantee, to whom some of the above parties have resold, until the receiver in this case was, under the orders of this court, put into possession of that portion of said lands which is described in Exhibit E to original bill; that above-named parties, or their grantees, are still in possession of that portion of the above land of which they have not been dispossessed by said receiver. And respondent, who avers that the lands shown by Exhibit A, attached to this answer, to have been sold to S. R. Rayburn, S. M. Baines, Samuel D. McKinney,

W. E. and A. E. Knox were paid for in full by said purchasers

156 and the proceeds applied to the construction of the Tennessee & Coosa Railroad, and were afterwards purchased by respondent from said parties, who executed deeds conveying the same to respondent, and put respondent in possession of the same, and respondent remained in possession until dispossessed by said receiver; that each of said purchasers received deeds duly executed by the railroad company, conveying the land to which they respectively purchased and paid for; that the land shown by said Exhibit A to have been sold to James Martin and Daniel H. Shields, W. W. Harper and Jefferson Hewitt were sold under decree of the chancery court of Marshall County, Ala., and purchased by respondent, who paid for the same and received register's deed thereto; that said decree was barred upon a bill filed by respondent to enforce the vendor's lien for the payment of the unpaid purchase-money notes trans-

ferred to him, as hereinbefore set forth. And respondent avers that after the lands in controversy had been certified to the Tennessee & Coosa Railroad Company, in June, 1860, it was discovered that the lands described and set forth in list attached to this answer, and marked Exhibit B, were not subject to said grant, because of the fact that said land was subject to claims of homestead settlers, which had attached prior to June 3, 1856; and said Tennessee & Coosa Railroad Company, at the request of the officers of the Land Department at Washington, reconveyed said lands described in Exhibit B, attached to this answer, to the United States; that this conveyance occurred in _____, and that since that time neither the Tennessee & Coosa Railroad Company nor respondent Carlisle have ever set up any claim to any of the lands so reconveyed.

GOODHUE & SIBERT,
Solicitors for Carlisle.

157 *List of lands sold by Tennessee & Coosa Railroad Company.*

EXHIBIT A TO ANSWER TO HUGH CARLISLE.

- Allen, L. B. Nov. 20, 1880, north half of northwest quarter section 29, township 8, range 4, 80 acres, paid in part.
- Aiken, James M. April 5, 1879, south half of southeast quarter section 25, township 8, range 3, 80 acres, paid in part.
- Amos, Wm. K. Nov. 2, 1882, northeast quarter of northeast quarter and northeast quarter of southeast quarter and southeast quarter of southeast quarter section 35, township 9, range 5, section 3, township 10, range 5, 120 acres, paid in part.
- Austin, Mary. June 9, 1880, southeast quarter of southwest quarter section 33, township 8, range 3, 40 acres, paid in part.
- Abney, Benjamin. Dec. 6, 1875, southwest quarter of southeast quarter section 35, township 7, range 4, 40 acres, paid in part.
- Allen, A. A. Dec. 3, 1881, southeast quarter section 31, township 9, range 4, 160 acres, paid in part.
- Avera, Jno. H. Dec. 27, 1881, southeast quarter section 19, township 9, range 4, 160 acres, paid in part.
- Bell, H. T. Jan. 9, 1880, east half of southwest quarter and southwest quarter of southeast quarter section 29, township 8, range 5, 120 acres, paid in part.
- Baugh, Wm. H. Aug. 7, 1883, southwest quarter of southwest quarter section 21, township 8, range 4, 40 acres, paid in part.
- Bryant, Geo. Sept. 19, 1881, southwest quarter of northwest quarter section 17, township 8, range 4, 40 acres, paid in part.
- Barnes, Wm. Aug. 11, 1882, east half of northeast quarter section 13, township 8, range 4, 80 acres, paid in part.
- Bain, J. S. Dec. 23, 1879, north half of northwest quarter section 27, township 7, range 5, 80 acres, paid in part.
- 158 Bruce, H. F. Oct. 5, 1881, southeast quarter of northwest quarter section 33.
- Bruce, H. F. Oct. 5, 1881, north half of northeast quarter, section 33.

- Bruce, H. F. Oct. 5, 1881, southwest quarter of northeast quarter section 33, township 9, range 5, 160 acres, paid in part.
- Baker, F. M. Dec. 5, 1883, southwest quarter of northwest quarter section 33, township 7, range 5, 40 acres, paid in part.
- Bailey, John W. Nov. 11, 1881, lot No. 1, northeast quarter of northeast quarter section 17, township 9, range 2, 41 acres, paid in part.
- Banister, A. L. Dec. 12, 1881, northeast quarter of section 9, township 10, range 3, 160 acres, paid in part.
- Bobo, W. K. Nov. 21, 1881, north half of northwest quarter section 1, township 10, range 3, 80 acres, paid in part.
- Bartlett, J. H. July 4, 1882, northeast quarter of northeast quarter section 27, township 9, range 5, 40 acres, paid in part.
- Bruce, F. M. Dec., 1882, southeast quarter of southeast quarter and northwest quarter of southeast quarter section 3, township 9, range 5, 80 acres, paid in part.
- Brown, John T. Aug. 1, 1882, northeast quarter of northwest quarter section 35, township 9, range 5, 40 acres, paid in part.
- Bates, T. J. Jan. 7, 1882, west half of northwest quarter section 1, township 10, range 5, 80 acres, paid in part.
- Bates, B. F. Jan. 7, 1882, northeast quarter of northwest quarter and west half of northeast quarter, section 1, township 10, range 5, 120 acres, paid in part.
- Brasher, H. W. May 7, 1881, north half of northwest quarter section 17, township 9, range 5, 80 acres, paid in part.
- Buckelew, J. W. Aug. 13, 1881, east half of northeast quarter section 11, township 10, range 3, 80 acres, paid in part.
- Barksdale, E. J. Aug. 3, 1883, south half of northeast quarter section 35, township 8, range 3, 80 acres, paid in part.
- Burdlyshaw, John F. F. Dec. 13, 1881, south half of northeast quarter section 17, township 9, range 4.
- 159 Burdlyshaw, John F. F. Dec. 13, 1881, east half of southeast quarter, section 17, township 9, range 4, 160 acres, paid in part.
- Boyd, T. J. Oct. 10, 1883, north half of northeast quarter, section 17, township 9, range 4, 80 acres, paid in part.
- Boyd, Joseph J. Oct. 10, 1883, south half of northeast quarter, section 17, township 9, range 4, 80 acres, paid in part.
- Boyd, Joseph J. Oct. 10, 1883, east half of southeast quarter, section 17, township 9, range 4, 80 acres, paid in part.
- Bartlett, J. H. Dec. 19, 1881, northeast quarter of southwest quarter, section 21, township 9, range 5, 40 acres, paid in part.
- Bartlett, J. H. Dec. 19, 1881, northwest quarter of southeast quarter, section 21, township 9, range 5, 40 acres, paid in part.
- Bartlett, J. H. Dec. 19, 1881, southwest quarter of northeast quarter, section 21, township 9, range 5, 40 acres, paid in part.
- Buckelew, S. P. Dec. 23, 1892, west half of northeast quarter, section 11, township 10, range 3, 80 acres, paid in part.
- Brooks, Eli J. Feb. 17, 1880, southeast quarter of southeast quarter, section 35, township 9, range 2, 40 acres, paid in part.
- Brooks, Eli J. Feb. 11, 1880, southwest fractional quarter fractional section 35, township 9, range 2, 66 acres, paid in part.
- Ballenger, T. D. Nov. 29, 1881, west half of southeast quarter, section 35, township 9, range 4, 80 acres, paid in part.

- Burges, Pierce. Jan. 25, 1881, northeast quarter of southwest quarter section 27, township 7, range 4, 40 acres, paid in part.
- Bishop, C. H. Jan. 21, 1881, east half of northwest quarter, section 29, township 9, range 5, 80 acres, paid in part.
- Bishop, C. H. Jan. 21, 1881, southwest quarter of northeast quarter, section 29, township 9, range 5, 40 acres, paid in part.
- Burgett, J. B. Dec. 19, 1881, west half of southwest quarter, section 17, township 10, range 3, 80 acres, paid in part.
- Burgett, J. B. Dec. 19, 1881, southwest quarter of northwest quarter, section 17, township 10, range 3, 40 acres, paid in part.
- 160 Bryan, J. H. Sept. 4, 1883, southeast quarter of northeast quarter section 11, township 9, range 1, 40 acres, paid in part.
- Bryan, W. R. Aug. 20, 1883, east half of northwest quarter section 11, township 9, range 1, 80 acres, paid in part.
- Bryan, W. R. Aug. 20, 1883, west half of northeast quarter section 11, township 9, range 1, 80 acres, paid in part.
- Bryan, James H. Sept. 4, 1883, northwest quarter of southeast quarter section 11, township 9, range 1, 40 acres, paid in part.
- Bryan, James H. Sept. 4, 1883, northeast quarter of southwest quarter section 11, township 9, range 1, 40 acres, paid in part.
- Bates, James W. January 14, 1880, northwest quarter of southwest quarter section 1, township 9, range 2, 40 acres, paid in part.
- Bishop, Attison L. Nov. 19, 1880, southeast quarter section 17, township 9, range 5, 160 acres, paid in part.
- Barnes, C. B. Dec. 19, 1882, south half of northeast quarter section 17, township 9, range 5, 80 acres, paid in part.
- Browe, James W. Feb. 19, 1880, southeast quarter of northeast quarter, section 1, township 10, range 2, 40 acres, paid in part.
- Beaty, T. B. Jan. 4, 1881, southwest quarter of section 11, township 10, range 3, 160 acres, paid in part.
- Bailey, Jerome. Aug. 27, 1880, southeast quarter of northeast quarter, section 23, township 7, range 4, 40 acres, paid in part.
- Beck, Robert J. Nov. 5, 1881, lot No. 5, southwest quarter of northwest quarter, section 7, township 9, range 5, 53 acres, paid in part.
- Bailey, Elleazer. Aug. 7, 1880, southeast quarter of southwest quarter, section 23, township 7, range 4, 40 acres, paid in part.
- Bailey, Elleazer. Jan. 11, 1873, northeast quarter of northwest quarter, section 25, township 7, range 4, 40 acres, paid in part.
- Boyd, R. K. August 25, 1875, northeast quarter of northeast quarter, section 5, township 8, range 4, 40 acres, paid in part.
- Banks, William. Feb. 25, 1880, southwest quarter of southwest quarter, section 27, township 9, range 2, 40 acres, paid in part.
- 161 Buckelew, S. P. July 19, 1882, east half of southeast quarter, section 33, township 9, range 3, 80 acres, paid in part.
- Buckelew, S. P. July 19, 1882, east half of northeast quarter, section 33, township 9, range 3, 80 acres, paid in part.
- Brown, Charlie. Dec. 2, 1881, west half of northwest quarter, section 15, township 9, range 3, 80 acres, paid in part.
- Brown, Charlie. Dec. 2, 1881, northeast quarter of northwest quarter, section 15, township 9, range 3, 40 acres, paid in part.
- Brewer, B. P. Dec. 18, 1879, east half of northeast quarter, section 15, township 9, range 3, 80 acres, paid in part.

- Brewer, B. P. Dec. 18, 1879, southwest quarter of northeast quarter, section 15, township 9, range 3, 40 acres, paid in part.
- Brewer, B. P. Dec. 18, 1879, southeast quarter of northwest quarter, section 15, township 9, range 3, 40 acres, paid in full.
- Boland, W. S. Aug. 24, 1881, northeast quarter of northwest quarter, section 31, township 9, range 3, 40 acres, paid in part.
- Brumbelow, C. Nov. 26, 1880, southwest quarter of southwest quarter, section 31, township 8, range 4, 40 acres, paid in part.
- Beck, Lucius E. Sept. 26, 1882, north half of southwest quarter, section 13, township 9, range 3, 80 acres, paid in part.
- Bailey, James. Dec. 23, 1881, northeast quarter of northwest quarter, section 9, township 9, range 5, 40 acres, paid in part.
- Bailey, James. Dec. 23, 1881, northwest quarter of northeast quarter, section 9, township 9, range 5, 40 acres, paid in part.
- Brown, Samuel E. Aug. 11, 1884, southwest quarter of southwest quarter, section 5, township 10, range 5, 40 acres, paid in part.
- Brewster, Jack. Nov. 24, 1880, southeast quarter of northeast quarter, section 7, township 8, range 4, 40 acres, paid in part.
- Bodine, W. C. Jan. 19, 1880, northeast quarter of southwest quarter, section 31, township 8, range 3, 40 acres, paid in part.
- Bodine, W. C. Jan. 19, 1880, northwest quarter of southeast quarter, section 31, township 8, range 3, 40 acres, paid in part.
- Bodine, W. C. Jan. 19, 1880, southwest quarter of northeast quarter, section 31, township 8, range 3, 40 acres, paid in part.
- 162 Beck, Elizabeth E. April 18, 1883, northeast quarter of southwest quarter, section 25, township 8, range 3, 40 acres, paid in part.
- Beck, Elizabeth E. April 18, 1886, southeast quarter of northwest quarter, section 25, township 8, range 3, 40 acres, paid in part.
- Beck, Elizabeth E. Southwest quarter of northeast quarter, section 25, township 8, range 3, 40 acres, paid in part.
- Bobo, Sampson. Oct. 19, 1881, east half of southeast quarter, section 15, township 10, range 3, 80 acres, paid in part.
- Beck, L. E. May 7, 1880, southwest quarter of southwest quarter, section 35, township 8, range 3, 40 acres, paid in part.
- Boyd, Joseph J. April 17, 1879, south half of southeast quarter, section 3, township 9, range 4, 80 acres, paid in part.
- Baker, Thomas. Jan. 2, 1880, southeast quarter, section 13, township 8, range 3, 160 acres, paid in part.
- Buchanan, Cans. Aug. 20, 1880, southwest quarter of northwest quarter, section 35, township 8, range 3, 40 acres, paid in part.
- Buchanan, Cans. Aug. 20, 1880, northwest quarter of southwest quarter, section 35, township 8, range 3, 40 acres, paid in part.
- Burns, S. J. May 25, 1883, southeast quarter of northeast quarter, section 9, township 9, range 4, 40 acres, paid in part.
- Burns, S. J. May 25, 1883, east half of southeast quarter, section 9, township 9, range 4, 80 acres, paid in part.
- Crowell, C. A. Aug. 12, 1884, west half of northwest quarter, section 7, township 9, range 4, 93 acres, paid in part.
- Copeland, W. J. Sept. 27, 1882, northwest quarter and northwest quarter of southwest quarter, section 33, township 8, range 2, 200 acres, paid in part.

- Clark, Joseph S. Jan. 9, 1880, northeast quarter of northwest quarter, section 3, township 9, range 5, 40 acres, paid in part.
- Carnes, Richard. Dec. 30, 1879, southeast quarter of southwest quarter, section 1, township 10, range 3, 40 acres, paid in part.
- 163 Childers, W. T. Aug. 14, 1880, southwest quarter, section 21, township 9, range 4, 160 acres, paid in part.
- Currier, R. S. Aug. 30, 1880, southeast quarter of southeast quarter, section 25, township 9, range 4, 40 acres, paid in part.
- Carr, D. P. Aug. 29, 1881, north half of southwest quarter, section 3, township 10, range 3, 80 acres, paid in part.
- Carr, D. P. Aug. 29, 1881, southeast quarter of southwest quarter, section 3, township 10, range 3, 40 acres, paid in part.
- Carr, W. R. C. Feb. 13, 1880, southeast quarter of fractional southwest quarter, section 35, township 9, range 2, 46 acres, paid in part.
- Carr, R. M. G. Feb. 13, 1880, northeast quarter of southwest fractional quarter, section 35, township 9, range 2, 40 acres, paid in part.
- Carr, Hugh M. Aug. 17, 1883, southwest quarter of northeast quarter, section 33, township 9, range 2, 40 acres, paid in part.
- Carr, A. M. F. Feb. 25, 1880, northwest fractional quarter of southwest fractional quarter, section 35, township 9, range 2, 40 acres, paid in part.
- Carroll, John C. December 16, 1881, west half of northwest quarter, section 9, township 10, range 3, 80 acres, paid in part.
- Cardwell, W. J. Aug. 29, 1881, southwest quarter of northeast quarter, section 1, township 10, range 2, 40 acres, paid in part.
- Candell, A. H. Sept. 19, 1881, northeast quarter of southeast quarter, section 1, township 11, range 2, 40 acres, paid in part.
- Collier, Jesse W. Nov. 26, 1881, east half of southeast quarter, section 35, township 9, range 4, 80 acres, paid in part.
- Coleman, Joshua N. April 5, 1884, northeast quarter of southeast quarter, section 25, township 8, range 3, 40 acres, paid in part.
- Cornelius, James. Jan. 17, 1881, northwest quarter of southeast quarter, section 9, township 9, range 3, 40 acres, paid in part.
- 164 Cornelius, James. Jan. 17, 1881, southwest quarter of northeast quarter, section 9, township 9, range 3, 40 acres, paid in part.
- Cornelius, David. March 5, 1881, northeast quarter of southeast quarter, section 5, township 9, range 3, 40 acres, paid in part.
- Cornelius, Madison. Feb. 7, 1882, south half of southeast quarter, section 9, township 9, range 3, 80 acres, paid in part.
- Cornelius, John. Jan. 17, 1881, south half of southeast quarter, section 5, township 9, range 3, 80 acres, paid in part.
- Casey, W. L. Dec. 8, 1880, southeast quarter of northeast quarter, section 5, township 9, range 3, 40 acres, paid in part.
- Casey, W. L. Dec. 8, 1880, northwest quarter of southeast quarter, section 5, township 9, range 3, 40 acres, paid in part.
- Clouds, G. D. Jan. 3, 1881, southeast quarter of southwest quarter, section 29, township 8, range 3, 40 acres, paid in part.
- Camp, T. S. Jan. 24, 1881, northwest quarter of southwest quarter, section 19, township 9, range 4, 30 acres, paid in part.
- Camp, Burrell M. Aug. 22, 1881, east half of southwest quarter, section 19, township 9, range 4, 80 acres, paid in part.

- Camp, W. A. Feb. 6, 1882, southeast fractional part 50.50 A., section 23, township 9, range 3.
- Camp, W. A. Feb. 6, 1882, southwest fractional part D. 30.50 A., section 23, township 9, range 3, 81 acres, paid in part.
- Camp, William. Dec. 21, 1881, northeast quarter of southeast quarter, section 29, township 9, range 3, 40 acres, paid in part.
- Cleburn, Wiley A. Dec. 13, 1879, south half of southeast quarter, section 13, township 10, range 3, 80 acres, paid in part.
- Coates, Pleas. Jan. 19, 1880, southwest quarter of northwest quarter, section 17, township 8, range 4, 40 acres, paid in part.
- Coates, Pleas. January 19, 1880, northwest quarter of southwest quarter, section 17, township 8, range 4, 40 acres, paid in part.
- Chambers, T. L. Aug. 1, 1880, southeast quarter of southwest quarter, section 5, township 9, range 5, 40 acres, paid in part.
- Chambers, T. L. Aug. 9, 1880, northwest quarter of southeast quarter, section 5, township 9, range 5, 40 acres, paid in part.
- 165 Claiburn, N. P. Dec. 31, 1879, northeast quarter of southeast quarter, section 25, township 10, range 3, 40 acres, paid in part.
- Claiburn, N. P. Dec. 31, 1879, southeast quarter of northeast quarter, section 25, township 10, range 3, 40 acres, paid in part.
- Corbin, M. F. Sept. 23, 1882, northwest quarter of northwest quarter, section 1, township 9, range 4, 40 acres, paid in part.
- Corbin, M. F. Nov. 13, 1880, northeast quarter of northeast quarter, section 35, township 8, range 4, 40 acres, paid in part.
- Collier, J. D. Jan. 13, 1881, southeast quarter of southwest quarter, section 1, township 10, range 5, 40 acres, paid in part.
- Denham, James. March 18, 1882, south half of northeast quarter, section 19, township 9, range 4, 40 acres, paid in part.
- Davis, W. Z. Jan. 27, 1881, southeast quarter of southwest quarter, section 5, township 10, range 5, 40 acres, paid in part.
- Dyer, W. T. May 11, 1880, southeast quarter of southwest quarter, section 1, township 9, range 3, 40 acres, paid in part.
- Dyer, W. T. May 11, 1880, southwest quarter of southeast quarter, section 1, township 9, range 3, 40 acres, paid in part.
- Dyer, W. T. April 23, 1880, southwest quarter of southwest quarter, section 1, township 9, range 3, 40 acres, paid in part.
- Duran, Samuel H. Jan. 1, 1880, northwest quarter of southwest quarter, section 1, township 9, range 3, 40 acres, paid in part.
- Dabbs, Jabez J. Oct. 10, 1881, west half of northwest quarter, section 9, township 9, range 2, 80 acres, paid in part.
- Dabbs, J. S. Dec. 9, 1882, southwest quarter of southeast quarter, section 33, township 8, range 2, 40 acres, paid in part.
- Ducket, L. D. Jan. 6, 1880, southwest quarter of southeast quarter, section 33, township 8, range 5, 40 acres, paid in part.
- Ducket, L. D. Jan. 6, 1880, southeast quarter of northwest quarter, section 33, township 8, range 5, 40 acres, paid in part.
- 166 Dunlap, J. H. Dec. 24, 1881, east half of southwest quarter, section 29, township 8, range 5, 80 acres, paid in part.
- Dunlap, J. H. Dec. 24, 1881, east half of southeast quarter, section 29, township 8, range 5, 80 acres, paid in part.
- Denham, N. C. March 10, 1879, south half of northwest quarter, section 19, township 9, range 4, 80 acres, paid in part.

- Davis, Geo. M. Jan. 27, 1881, west half of southwest quarter, section 5, township 10, range 5, 80 acres, paid in part.
- Dickson, Jas. S. Dec. 6, 1879, northwest quarter of northeast quarter, section 17, township 9, range 4, 40 acres, paid in part.
- Dyer, E. S. May 8, 1880, south half of northwest quarter, section 1, township 9, range 3, 80 acres, paid in part.
- Dyer, E. S. May 8, 1880, northwest quarter of southeast quarter, section 1, township 9, range 3, 40 acres, paid in part.
- Dyer, E. S. May 8, 1880, southwest quarter of northeast quarter, section 1, township 9, range 3, 40 acres, paid in part.
- Dickson, Jno. S. Feb. 3, 1882, northeast quarter of northeast quarter, section 17, township 9, range 5, 40 acres, paid in part.
- Ducket, J. B. Jan. 7, 1880, east half of southeast quarter, section 33, township 8, range 5, 80 acres, paid in part.
- Eason, B. R. Dec. 9, 1881, southwest quarter of northwest quarter, section 3, township 10, range 5, 40 acres, paid in part.
- Eason, B. R. Dec. 9, 1881, southwest quarter of southwest quarter, section 3, township 10, range 5, 40 acres, paid in part.
- Eason, B. R. Dec. 9, 1881, south half of northeast quarter, section 3, township 10, range 5, 80 acres, paid in part.
- Estes, J. R. Nov. 8, 1881, east half of southwest quarter, section 13, township 10, range 3, 80 acres, paid in part.
- Edens, Hiram E. Dec. 1, 1881, south half of southeast quarter, section 7, township 9, range 4, 80 acres, paid in part.
- Edins, H. A. Dec. 19, 1881, northwest quarter of southwest quarter, section 17, township 9, range 4, 40 acres, paid in part.
- Edins, H. A. Dec. 19, 1881, southwest quarter of northwest quarter, section 17, township 9, range 4, 40 acres, paid in part.
- 167 Eubank, Daniel. February 24, 1879, south half of southeast quarter, section 29, township 9, range 5, 80 acres, paid in part.
- Eubank, Wm. H. Jan. 13, 1881, south half of southwest quarter, section 29, township 9, range 5, 80 acres, paid in part.
- Eubank, Daniel. Jan. 13, 1881, northwest quarter of southeast quarter, section 29, township 9, range 5, 40 acres, paid in part.
- Eubank, Richard L. Jan. 13, 1881, east subdivision of northeast subdivision, section 31, township 9, range 5, 81 acres, paid in part.
- Eubank, Richard. Jan. 13, 1881, northwest quarter, section 33, township 9, range 5, 160 acres, paid in part.
- Elkins, R. A. Nov. 14, 1881, east half of southwest quarter, section 17, township 10, range 5, 80 acres, paid in part.
- Elkins, Cath. Dec. 4, 1882, southwest quarter of southeast quarter, section 17, township 10, range 5, 40 acres, paid in part.
- Fowler, Arthur. Jan. 7, 1880, northwest quarter of northwest quarter, section 3, township 9, range 5, 40 acres, paid in part.
- Fowler, Richard. Jan. 7, 1880, south half of southwest quarter, section 3, township 9, range 5, 80 acres, paid in part.
- Fowler, Richard. Jan. 7, 1880, northeast quarter of southwest quarter, section 3, township 9, range 5, 40 acres, paid in part.
- Fuller, W. F. West half of northwest quarter, section 23, township 9, range 5, 80 acres, paid in part.
- Fletcher, J. H. Sept. 3, 1881, west half of northeast quarter, section 23, township 9, range 5, 80 acres, paid in part.

- Fletcher, J. H. Sept. 3, 1881, east half of northwest quarter, section 23, township 9, range 5, 80 acres, paid in part.
- Fletcher, C. G. Dec. 6, 1881, west half of northwest quarter, section 23, township 9, range 5, 80 acres, paid in part.
- Fennell, Peter. Jan. 19, 1880, southeast quarter of northwest quarter, section 5, township 8, range 4, 40 acres, paid in part.
- Fields, Daltha A. Dec. 16, 1881, northeast quarter of northeast quarter, section 21, township 9, range 3, 40 acres, paid in part.
- 168 Fields, Daltha A. Dec. 16, 1881, part A 36 acres and west part of northeast quarter, section 21, township 9, range 3, 145 acres, paid in part.
- Farmer, F. M. and A. J. Jan. 5, 1880, southwest quarter, section 21, township 8, range 4, 160 acres, paid in part.
- Filmore, Thomas. Jan. 2, 1880, northwest quarter of northeast quarter, section 21, township 8, range 4, 40 acres, paid in part.
- Gallman, William G. July 26, 1878, north half of northwest quarter, section 29, township 8, range 4, 80 acres, paid in part.
- Gilispie, James L. Jan. 2, 1880, northwest quarter, section 31, township 9, range 5, 160 acres, paid in part.
- Gilland, B. F. May 18, 1882, north half of northwest quarter, section 3, township 9, range 4, 80 acres, paid in part.
- Garard, James. Aug. 9, 1881, southeast quarter of southeast quarter, section 21, township 9, range 5, 40 acres, paid in part.
- Garard, Permelia. Feb. 22, 1881, west half of northwest quarter, section 29, township 9, range 5, 80 acres, paid in part.
- Garard, William F. Feb. 6, 1880, southwest fractional quarter of southwest fractional quarter and south fractional part of southwest quarter, section 33, township 9, range 5, 80 acres, paid in part.
- Garard, Green B. Jan. 2, 1879, northwest quarter of southwest quarter, section 19, township 9, range 5, 40 acres, paid in part.
- Garard, Green B. Jan. 2, 1879, southwest quarter of northwest quarter, section 19, township 9, range 5, 40 acres, paid in part.
- Gilbert, Frank. Jan. 26, 1882, northwest quarter, section 3, township 10, range 3, 160 acres, paid in part.
- Gregory, J. T. Dec. 13, 1879, east half of northeast quarter, section 35, township 8, range 3, 80 acres, paid in part.
- Gregory, Marshall N. April 23, 1880, north half of northeast quarter, section 11, township 9, range 3, 80 acres, paid in part.
- 169 Gregory, Marshall N. April 23, 1880, north half of northwest quarter, section 11, township 9, range 3, 80 acres, paid in part.
- Gregory, John A. Dec. 23, 1882, east half of northeast quarter, section 7, township 9, range 4, 80 acres, paid in part.
- Green, Joseph G. March 4, 1882, southwest quarter of southeast quarter, section 3, township 10, range 2, 40 acres, paid in part.
- Green, Andrew H. Aug. 23, 1882, east half of southeast quarter, section 15, township 9, range 3, 80 acres, paid in part.
- Gaddis, Thomas. Dec. 18, 1882, northwest quarter of southwest quarter, section 31, township 9, range 3, 40 acres, paid in part.
- Gregg, C. C. Nov. 7, 1876, northeast quarter of northwest quarter, section 11, township 7, range 4, 40 acres, paid in part.
- Gorham, H. M. Sept. 10, 1881, east half of southeast quarter, section 21, township 9, range 5, 80 acres, paid in part.

- Gorham, H. M. Dec. 14, 1881, southwest quarter of southeast quarter, section 21, township 9, range 5, 40 acres, paid in part.
- Hornsby, James H. Dec. 13, 1881, north half of northeast quarter, section 17, township 9, range 4, 80 acres, paid in part.
- Howle, Alexander. June 15, 1882, southeast fractional quarter, section 31, township 8, range 2, 133 acres, paid in part.
- Hyatt, John H. Feb. 23, 1883, southwest quarter of northeast quarter, section 27, township 9, range 3, 40 acres, paid in part.
- Hyatt, John H. Feb. 23, 1883, northwest quarter of southeast quarter, section 27, township 9, range 3, 40 acres, paid in part.
- Hyatt, Samuel H. Dec. 31, 1881, northwest quarter, section 27, township 9, range 3, 160 acres, paid in part.
- Hyatt, Samuel H. Dec. 31, 1881, northeast quarter of northwest quarter, section 19, township 9, range 3, 40 acres, paid in part.
- 170 Harper, John. Dec. 19, 1881, west half of southeast quarter, section 25, township 9, range 3, 80 acres, paid in part.
- Hefner, Wiley F. Sept., 1879, northeast quarter of southwest quarter, section 25, township 8, range 3, 40 acres, paid in part.
- Hefner, Wiley F. Sept., 1879, southeast quarter of northwest quarter, section 25, township 8, range 3, 40 acres, paid in part.
- Hefner, Wiley F. Sept., 1879, southwest quarter of northeast quarter, section 25, township 8, range 3, 40 acres, paid in part.
- Hipp, B. S. May 25, 1882, northeast quarter of southwest quarter, section 3, township 9, range 4, 40 acres, paid in part.
- Hipp, B. S. May 25, 1882, northwest quarter of southeast quarter, section 3, township 9, range 4, 40 acres, paid in part.
- Hipp, B. S. Dec. 8, 1879, southeast quarter of northeast quarter and 20 acres, more or less, of north part of southwest quarter of northeast quarter, section 11, township 9, range 4, 65 acres, paid in part.
- Hunt, A. D. May 25, 1883, southeast quarter of northeast quarter, section 9, township 9, range 4, 40 acres, paid in part.
- Hunt, A. D. May 25, 1883, east half of southeast quarter, section 9, township 9, range 4, 80 acres, paid in part.
- Horton, T. G. Oct. 14, 1881, southeast quarter, section 9, township 10, range 5, 160 acres, paid in part.
- Hall, Gran. Nov. 13, 1879, east half of northeast quarter, section 5, township 9, range 4, 80 acres, paid in part.
- Hall, Gran. Nov. 13, 1879, northwest quarter of northeast quarter, section 5, township 9, range 4, 40 acres, paid in part.
- Herrin, John T. Dec. 23, 1881, northwest fractional part A and the southwest fractional part B and northwest quarter of northeast fractional quarter, and southwest fractional quarter of southeast fractional quarter, section 29, township 10, range 5, 135 acres, paid in part.
- Hewtt, J. Sept. 1, 1881, south half of southeast quarter, section 9, township 9, range 4, 80 acres, paid in part.
- Hewtt, J. Sept. 1, 1881, northeast quarter of southeast quarter, section 9, township 9, range 4, 40 acres, paid in part.
- 171 Hambree, Richard M. Feb. 19, 1880, north half of northeast quarter, section 1, township 10, range 2, 80 acres, paid in part.
- Horton, T. G. Oct. 14, 1881, west half of northwest quarter, section 15, township 10, range 5, 80 acres, paid in part.

- Howard, A. L. Jan. 2, 1879, south half of southwest quarter, section 27, township 7, range 5, 80 acres, paid in part.
- Howard, A. L. Jan. 2, 1879, northeast quarter of southwest quarter, section 27, township 7, range 5, 40 acres, paid in part.
- Haley, Allison N. Aug. 5, 1881, southwest quarter of southwest quarter, section 1, township 10, range 3, 40 acres, paid in part.
- Hicks, David. Oct. 7, 1881, southwest quarter of northwest quarter, section 25, township 7, range 4, 40 acres, paid in part.
- Hendricks, Prater. Sept. 12, 1881, west half of southeast quarter, section 19, township 9, range 5, 80 acres, paid in part.
- Hendricks, Prater. Sept. 12, 1881, east half of southwest quarter, section 19, township 9, range 2, 80 acres, paid in part.
- Hopson, Mary. Feb. 13, 1880, fractional B southwest quarter of northeast quarter, section 35, township 9, range 2, 28 acres, paid in part.
- Hendricks, Jacob W. Sept. 8, 1883, west half of southeast quarter, section 5, township 9, range 4, 80 acres, paid in part.
- Hendricks, Jacob W. Sept. 8, 1883, east half of southwest quarter, section 5, township 9, range 4, 80 acres, paid in part.
- Hamrick, J. M. Feb. 9, 1883, northwest quarter of northeast quarter, section 13, township 9, range 4, 40 acres, paid in part.
- Hamrick, J. M. Oct. 29, 1883, southwest quarter, section 21, township 9, range 4, 160 acres, paid in part.
- Hamrick, J. M. Sept. 16, 1885, southwest quarter of northeast quarter, section 13, township 9, range 4, 40 acres, paid in part.
- Hamrick, J. M. Sept. 16, 1885, east half of northeast quarter, section 13, township 9, range 4, 80 acres, paid in part.
- Henson, Arch. Dec. 19, 1878, east half of northeast quarter, section 13, township 9, range 4, 86 acres, paid in part.
- 172 Holmes, W. L. Sept. 19, 1881, northeast quarter, section 35, township 10, range 3, 160 acres, paid in part.
- Hill, Joseph L. Dec. 8, 1881, southeast quarter of southwest quarter, section 1, township 10, range 3, 40 acres, paid in part.
- Horton, W. J. March 20, 1882, southwest quarter of southeast quarter, section 3, township 10, range 2, 40 acres, paid in part.
- Hill, L. T. Oct. 17, 1881, northwest quarter of southeast quarter, section 13, township 10, range 3, 40 acres, paid in part.
- Haley, A. N. Dec. 30, 1879, north half of southwest quarter, section 1, township 10, range 3, 80 acres, paid in part.
- Haley, A. N. Dec. 30, 1879, south half of northwest quarter, section 1, township 10, range 3, 80 acres, paid in part.
- Holmes, J. M. Sept. 19, 1881, southeast quarter, section 35, township 10, range 2, 160 acres, paid in part.
- Hyatt, Wm. G. Dec. 18, 1880, east half of northwest quarter, section 29, township 9, range 3, 80 acres, paid in part.
- Horton, Daniel P. April 20, 1880, southeast quarter of southwest quarter, section 35, township 9, range 5, 40 acres, paid in part.
- Horton, Jesse N. Nov. 26, 1881, south half of southwest quarter, section 35, township 9, range 3, 80 acres, paid in part.
- Hunt, A. J. Dec. 22, 1879, southwest quarter of southwest quarter, section 35, township 10, range 3, 40 acres, paid in part.
- Hollis, Wm. B. Nov. 29, 1884, west half of southeast quarter, section 13, township 9, range 3, 80 acres, paid in part.

- Hopson, David W. Feb. 13, 1880, fractional C southeast quarter of northwest quarter, section 35, township 9, range 2, 41 acres, paid in part.
- Hopson, David W. Aug. 17, 1883, southwest quarter of southwest quarter, section 33, township 9, range 2, 40 acres, paid in part.
- Herrin, Thos. B. Oct. 18, 1875, northeast quarter of northeast quarter, section 27, township 8, range 3, 40 acres, paid in part.
- Hartsell, J. E. Jan. 9, 1880, northeast quarter of southwest quarter, section 27, township 8, range 4, 40 acres, paid in part.
- 173 Holmes, J. M. Nov. 9, 1883, east half of southwest quarter, section 35, township 10, range 2, 80 acres, paid in part.
- Harrison, John A. Dec. 16, 1882, southeast quarter of northwest quarter, section 9, township 8, range 5, 40 acres, paid in part.
- Harrison, John A. Dec. 16, 1882, southwest quarter of northeast quarter, section 9, township 8, range 5, 40 acres, paid in part.
- Horton, Archie P. Dec. 7, 1882, east half of northeast quarter, section 9, township 10, range 5, 80 acres, paid in part.
- Hatley, Susan. Dec. 17, 1880, southwest quarter of southwest quarter, section 19, township 9, range 4, 40 acres, paid in part.
- Henry, Wallace. Aug. 12, 1876, southeast quarter of southwest quarter, section 15, township 7, range 4, 40 acres, paid in part.
- Hatcher, John B. Oct. 11, 1875, northeast quarter of southwest quarter, section 27, township 7, range 4, 40 acres, paid in part.
- Hembree, W. M. Dec. 15, 1881, north half of southeast quarter, section 7, township 10, range 3, 80 acres, paid in part.
- Hembree, W. M. Dec. 15, 1881, northwest quarter of southeast quarter, section 7, township 10, range 3, 40 acres, paid in part.
- Hatcher, John B. Sept. 29, 1875, southwest quarter of northeast quarter, section 27, township 7, range 4, 40 acres, paid in part.
- Hefner, W. F. Jan. 4, 1881, southwest quarter of southwest quarter, section 19, township 8, range 4, 40 acres, paid in part.
- Hartsell, Solomon. Jan. 9, 1880, west half of northwest quarter, section 25, township 8, range 5, 80 acres, paid in part.
- James, Joseph. March 29, 1883, southwest quarter of northeast quarter, section 29, township 10, range 5, 40 acres, paid in part.
- Jarnigan, John H. Feb. 23, 1880, southeast quarter of southwest quarter, section 31, township 8, range 3, 40 acres, paid in part.
- Jarnigan, James. Jan. 29, 1880, southeast quarter of southwest quarter, section 29, township 8, range 3, 40 acres, paid in part.
- 174 Jarnigan, James. March 14, 1883, north half of northeast quarter, section 33, township 8, range 3, 80 acres, paid in part.
- Jarnigan, James. March 14, 1883, southwest quarter of northeast quarter, section 33, township 8, range 3, 40 acres, paid in part.
- Jarnigan, James. March 14, 1883, northeast quarter of southwest quarter, section 33, township 8, range 3, 40 acres, paid in part.
- Jordan, William. Dec. 22, 1879, southeast quarter of southwest quarter, section 35, township 10, range 3, 40 acres, paid in part.
- Jordan, James D. Oct. 18, 1881, west half of southwest quarter, section 21, township 9, range 5, 80 acres, paid in part.
- Jordan, James D. Oct. 18, 1881, southwest quarter of northwest quarter, section 21, township 9, range 5, 40 acres, paid in part.

- Jones, F. W. Nov. 26, 1880, north half of southwest fractional quarter, section 25, township 9, range 2, 80 acres, paid in part.
- Jones, T. W. Nov. 26, 1880, southwest quarter of northeast fractional quarter, section 25, township 9, range 5, 40 acres, paid in part.
- Jones, William L. Nov. 9, 1881, southeast quarter, section 33, township 9, range 5, 160 acres, paid in part.
- Jones, William L. Nov. 9, 1881, southeast quarter of northeast quarter, section 33, township 9, range 5, 40 acres, paid in part.
- Jones, William M. or H. Dec. 2, 1881, northeast quarter of southeast quarter, section 31, township 8, range 5, 40 acres, paid in part.
- Jones, J. R. Dec. 28, 1882, south half of northeast quarter, section 9, township 9, range 5, 80 acres, paid in part.
- Jones, J. R. December 28, 1882, northeast quarter of southeast quarter, section 9, township 9, range 5, 40 acres, paid in part.
- 175 Johnson, William A. Nov. 15, 1878, southwest quarter of northwest quarter, section 19, township 7, range 5, 40 acres.
- Johnson, James A. Oct. 24, 1881, northeast quarter of northwest quarter, section 15, township 10, range 5, 40 acres, paid in part.
- Johnson, James A. Oct. 24, 1881, northwest quarter of northeast quarter, section 15, township 10, range 5, 40 acres, paid in part.
- Jackson, James L. Jan. 2, 1886, northeast quarter of northeast quarter, section 25, township 8, range 3, 40 acres, paid in part.
- Jordan, Ed. Jan. 27, 1881, northeast quarter of southwest quarter, section 13, township 8, range 3, 40 acres, paid in part.
- Jackson, William H. Dec. 24, 1879, northeast quarter of northeast quarter, section 5, township 9, range 3, 40 acres, paid in part.
- Ivey, John W. Nov. 24, 1880, southwest quarter of southeast quarter, section 35, township 8, range 3, 40 acres, paid in part.
- Isdell, Joe. March 23, 1881, northeast quarter of northwest quarter, section 1, township 9, range 3, 40 acres, paid in part.
- Isdell, Joe. March 23, 1881, north half of northeast quarter, section 1, township 9, range 3, 80 acres, paid in part.
- Isdell, Joe. March 23, 1881, southeast quarter of northeast quarter, section 1, township 9, range 3, 40 acres, paid in part.
- Isbell, Albert C. Oct. 12, 1883, northeast quarter of southeast quarter, section 3, township 9, range 5, 40 acres, paid in part.
- Isbell, Albert C. Oct. 12, 1883, southwest quarter of southeast quarter, section 3, township 9, range 5, 40 acres, paid in part.
- Isbell, James R. Dec. 12, 1882, southwest quarter of southeast quarter, section 3, township 9, range 5, 40 acres, paid in part.
- Isbell, James R. Dec. 12, 1882, northeast quarter of northeast quarter, section 3, township 9, range 5, 40 acres, paid in part.
- King, Wallace. Dec. 12, 1882, northwest quarter of southwest quarter, section 3, township 7, range 4, 40 acres, paid in part.
- Knop, Walter. Aug. 23, 1881, east half of northeast quarter, section 15, township 9, range 3, 80 acres, paid in part.
- 176 King, D. A. Jan. 26, 1881, south half of northwest quarter, section 29, township 8, range 4, 80 acres, paid in part.
- King, Thomas J. April 21, 1880, southeast quarter of northeast quarter, section 27, township 7, range 4, 40 acres, paid in part.
- King, C. C. June 25, 1880, south half of southeast quarter, section 33, township 7, range 4, 80 acres, paid in part.

- King, Andy. July 8, 1878, northwest quarter of northeast quarter, section 5, township 8, range 4, 40 acres, paid in part.
- Kennedy, Jno. P. May 13, 1881, southeast quarter of northwest quarter, section 5, township 9, range 4, 40 acres, paid in part.
- Kennedy, Jno. P. Dec. 4, 1880, east half of northeast quarter, section 31, township 8, range 4, 80 acres, paid in part.
- Kytte, A. Z. Dec. 23, 1881, southeast quarter of southwest quarter, section 17, township 10, range 3, 40 acres, paid in part.
- Knight, Elias W. Aug. 13, 1881, southwest quarter of southeast quarter, section 35, township 9, range 5, 40 acres, paid in part.
- Knight, Elias W. Aug. 13, 1881, southeast quarter of southwest quarter, section 35, township 9, range 5, 40 acres, paid in part.
- Kelley, Robert E. Jan. 15, 1873, southeast quarter of northwest quarter, section 33, township 8, range 3, 40 acres, paid in part.
- Kelley, Robert E. Jan. 15, 1873, northwest quarter of northeast quarter, section 33, township 8, range 3, 40 acres, paid in part.
- Kelley, J. D. Aug. 15, 1881, west half of southwest quarter, section 11, township 9, range 3, 80 acres, paid in part.
- Kimbrell, Willie. July 4, 1883, east half of southwest fractional quarter, section 29, township 10, range 5, 120 acres, paid in part.
- Kuykendall, John. Dec. 8, 1879, south half of northeast quarter, section 1, township 9, range 4, 80 acres, paid in part.
- Kuykendall, Geo. M. Dec. 8, 1879, east half of southeast quarter, section 1, township 9, range 4, 80 acres.
- 177 Kuykendall, C. Dec. 19, 1879, west half of northwest quarter, section 17, township 9, range 5, 80 acres, paid in part.
- Kuykendall, John. Jan. 8, 1881, northwest quarter of southeast quarter, section 1, township 9, range 4, 40 acres, paid in part.
- Kuykendall, J. H. March 3, 1881, south half of northeast quarter, section 17, township 9, range 5, 80 acres, paid in part.
- Kuykendall, J. H. March 3, 1881, southeast quarter of northwest quarter, section 17, township 9, range 5, 40 acres, paid in part.
- Long, Jerry. Feb. 14, 1882, northwest quarter of northwest quarter, section 21, township 8, range 4, 40 acres, paid in part.
- Long, H. W. Jan. 28, 1882, south half of northeast quarter, less 5 A, section 29, township 8, range 4, 75 acres, paid in part.
- Long, William. Jan. 17, 1880, southeast quarter of southeast quarter, section 7, township 9, range 3, 40 acres, paid in part.
- Long, E. N. Nov. 24, 1882, southwest quarter of northwest quarter, section 1, township 9, range 4, 40 acres, paid in part.
- Long, E. N. Nov. 24, 1882, northwest quarter of southwest quarter, section 1, township 9, range 4, 40 acres, paid in part.
- Long, Wm. M. Feb. 9, 1883, southwest quarter of northeast quarter, section 13, township 9, range 4, 40 acres, paid in part.
- Long, Wm. M. Feb. 9, 1883, east half of northeast quarter, section 13, township 9, range 4, 80 acres, paid in part.
- Long, E. N. Jan. 9, 1880, west half of northeast quarter, section 13, township 9, range 4, 80 acres, paid in part.
- Lansford, W. H. Oct. 18, 1880, east half of northeast quarter, section 33, township 8, range 5, 80 acres, paid in part.
- Leak, Jeremiah. Jan. 28, 1885, southeast fractional quarter of fractional section 31, township 8, range 2, 133 acres, paid in part.

- Ledbetter, Shel. P. Aug. 24, 1880, northeast quarter, section 9, township 10, range 5, 160 acres, paid in part.
- Ledbetter, Shel. P. Oct. 23, 1880, northwest quarter, section 9, township 10, range 5, 160 acres, paid in part.
- 178 Lumpkin, A. L. Nov. 2, 1881, west half of northwest quarter, section 5, township 10, range 3, 80 acres, paid in part.
- Lowery, John. Aug. 15, 1881, west half of southeast quarter, section 1, township 10, range 2, 80 acres, paid in part.
- Lusk, Nathan B. Sept. 1879, north half of southeast quarter, section 25, township 8, range 3, 80 acres, paid in part.
- Luther, Ira B. Sept. 16, 1881, southwest quarter of southwest quarter, section 25, township 8, range 5, 40 acres, paid in part.
- Luther, Ira B. Sept. 16, 1881, southwest quarter of southwest quarter, section 23, township 8, range 5, 40 acres, paid in part.
- Lambert, J. J. Nov. 25, 1882, east half of northeast quarter, section 7, township 8, range 5, 80 acres, paid in part.
- Lackey, W. H. June 12, 1883, southeast quarter of northwest quarter, section 29, township 10, range 5, 40 acres, paid in part.
- Lackey, W. H. June 12, 1883, north half of southwest quarter, section 29, township 10, range 5, 80 acres, paid in part.
- Lackey, W. H. June 12, 1883, southwest quarter of southwest quarter, section 29, township 10, range 5, 40 acres, paid in part.
- Lemons, Williams. Aug. 29, 1882, east half of southeast quarter, section 17, township 8, range 4, 80 acres, paid in part.
- Minor, Wm. B. Jan. 3, 1880, north half of southeast quarter, section 35, township 8, range 4, 80 acres, paid in part.
- Moore, W. W. Feb. 16, 1880, northwest quarter of southwest quarter, section 27, township 9, range 2, 40 acres, paid in part.
- Mardis, J. M. G. March 6, 1880, southwest quarter of northeast quarter, section 5, township 10, range 2, 40 acres, paid in part.
- McLead, A. Sept. 29, 1881, northeast quarter of northeast quarter, section 33, township 9, range 4, 40 acres, paid in part.
- Moore, W. V. Sept. 21, 1882, east half of northwest quarter, section 31, township 7, range 5, 80 acres, paid in part.
- Moore, W. V. Sept. 21, 1882, west half of northeast quarter, section 31, township 7, range 5, 80 acres, paid in part.
- 179 Mayfield, J. T., and B. C. Bartlett. Dec. 31, 1881, southwest quarter, section 29, township 9, range 4, 160 acres, paid in part.
- Mitcham, T. J. Jan. 13, 1885, west half of southeast quarter, section 5, township 9, range 4, 80 acres, paid in part.
- Mitcham, T. J., Jan. 13, 1885, east half of southwest quarter, section 5, township 9, range 4, 80 acres.
- McCracken, George W. January 13, 1880, lots 3 and 6, east half of northwest quarter, section 7, township 9, range 5, 80 acres, paid in part.
- McCollum, William H. July 15, 1881, lots 3 and 6, east half of northwest quarter, section 7, township 9, range 5, 80 acres, paid in part.
- Murphree, J. C. July 27, 1881, southwest quarter, section 13, township 10, range 2, 160 acres, paid in part.
- Miller, N. E. Dec. 3, 1881, northeast quarter, section 17, township 10, range 3, 160 acres, paid in part.

- Meaders, W. M. Dec. 23, 1878, south half of southeast quarter, section 13, township 9, range 4, 86 acres, paid in part.
- Maberry, Sandford. August 1, 1883, south half of southeast quarter, section 21, township 10, range 3, 80 acres, paid in part.
- Maberry, Sandford. August 1, 1883, southeast quarter of southwest quarter, section 21, township 10, range 3, 40 acres, paid in part.
- Medlock, John R. Nov. 7, 1881, southwest quarter, section 13, township 9, range 4, 160 acres, paid in part.
- McCormick, Josiah. September 7, 1881, east half of southwest quarter, section 23, township 9, range 5, 80 acres, paid in part.
- McCormick, Josiah. Sept. 7, 1881, southeast quarter of northwest quarter, section 23, township 9, range 5, 40 acres, paid in part.
- McCormick, Josiah. September 7, 1881, east half of southwest quarter of southwest quarter, section 23, township 9, range 5, 20 acres, paid in part.
- Morton, James. Dec. 17, 1880, west half of southeast quarter, section 3, township 10, range 3, 80 acres, paid in part.
- Morton, Harper. Feb. 25, 1880, east half of northeast quarter, section 5, township 10, range 2, 80 acres, paid in part.
- 180 Moore, John W. Sept. 8, 1881, north half of southeast quarter, section 25, township 7, range 4, 80 acres, paid in part.
- Morton, William D. Jan. 11, 1873, northeast quarter of northeast quarter, section 35, township 7, range 4, 40 acres, paid in part.
- Moore, J. R. Sept. 12, 1883, south half of southwest quarter, section 9, township 9, range 4, 80 acres, paid in part.
- Miller, Ellered. Nov. 12, 1879, southeast quarter of northeast quarter and northeast quarter of southeast quarter, section 31, township 10, range 3, 80 acres, paid in part.
- Miller, Ellered. Nov. 12, 1879, southwest quarter of southwest quarter and northwest quarter of northwest quarter, section 29, township 10, range 3, 80 acres, paid in part.
- Miller, E. W. Feb. 15, 1882, northeast quarter of southwest quarter and southeast quarter of northwest quarter and southwest quarter of northwest quarter and northwest quarter of southeast quarter, section 29, township 10, range 3, 160 acres, paid in part.
- Miller, E. W. Feb. 15, 1882, southwest quarter of section 21, township 10, range 3, 160 acres, paid in part.
- Mahally, Daniel. Oct. 11, 1879, southwest quarter of southwest quarter, section 29, township 8, range 4, 40 acres, paid in part.
- McLead, A. Nov. 25, 1881, southeast quarter of northeast quarter and northeast quarter of southeast quarter, section 15, township 9, range 5, 80 acres, paid in part.
- Moore, E. W. Nov. 4, 1882, north half of northwest quarter, section 9, township 9, range 4, 80 acres, paid in part.
- Moore, E. W. Nov. 4, 1882, northwest quarter of northeast quarter, section 9, township 9, range 4, 40 acres, paid in part.
- McKey, Isaac G. Feb. 24, 1879, southeast quarter of southwest quarter, section 27, township 8, range 4, 40 acres, paid in part.
- Mahan, Henry M. Jan. 15, 1879, southwest quarter of southwest quarter, section 33, township 8, range 3, 40 acres, paid in part.
- Minor, S. T. W. Oct. 10, 1881, northwest quarter of northwest quarter, section 27, township 8, range 4, 40 acres, paid in part.

- Miller, J. H. April 26, 1881, southwest quarter of southeast
181 quarter and northeast quarter of southwest quarter, section 9,
township 9, range 5, 80 acres, paid in part.
- Moultrie, J. Y. Dec. 27, 1880, north half of northeast quarter, section
29, township 9, range 3, 80 acres, paid in part.
- Moore, G. W. Jan. 4, 1881, west half of northwest quarter, section 29,
township 9, range 3, 80 acres, paid in part.
- Mitchell, W. A. Jan. 7, 1881, west half of northwest quarter, section
3, township 8, range 4, 80 acres, paid in part.
- Moore, James H. Nov. 30, 1880, southwest quarter of southwest quarter,
section 31, township 8, range 3, 40 acres, paid in part.
- Miller, Jesse F. Dec. 31, 1878, northwest quarter of northeast quarter
and northeast quarter of northwest quarter, section 19, township 9,
range 5, 80 acres, paid in part.
- Miller, Jesse F. Jan. 9, 1880, southeast quarter of northwest quarter,
section 19, township 9, range 5, 40 acres, paid in part.
- Mathis, Geo. W. Feb. 27, 1879, southeast quarter of southwest quarter,
section 27, township 8, range 4, 40 acres, paid in part.
- Mabry, J. F. Feb. 13, 1880, north half of southeast fractional quarter,
fractional section 25, township 9, range 2, 79 acres, paid in part.
- Moore, W. V. Dec. 24, 1878, southwest quarter of southeast quarter,
section 35, township 7, range 4, 40 acres, paid in part.
- McElmoyle, L. A. Jan. 3, 1880, southeast quarter of northwest quarter
and southwest quarter of northeast quarter, section 5, township 9,
range 5, 80 acres, paid in part.
- Noojin, John B. Nov. 14, 1881, southeast quarter and east half of
southwest quarter, section 15, township 10, range 5, 240 acres, paid
in part.
- Noojin, J. T. Nov. 4, 1882, northeast quarter and east half of north-
west quarter, section 23, township 10, range 5, 240 acres, paid in part.
- Noojin, Cain M. Oct. 23, 1882, northeast quarter and south half of
northwest quarter, section 15, township 10, range 5, 240 acres, paid
in part.
- Noojin, Dollie. Nov. 14, 1881, southwest quarter and southwest
182 quarter of northwest quarter and southwest quarter of south-
east quarter, section 23, township 10, range 5, 240 acres, paid
in part.
- Nelson, A. M. Feb. 13, 1880, fractional A southeast quarter of north-
east quarter, section 35, township 9, range 2, 52 acres, paid in part.
- Noble, Henry. Aug. 29, 1881, northeast quarter, section 27, township 9,
range 5, 160 acres, paid in part.
- Nalor, Martin F. Jan. 14, 1882, west half of southwest quarter, sec-
tion 7, township 9, range 4, 80 acres, paid in part.
- Nesmith, Isaac N. Feb. 14, 1880, northeast quarter of southwest quarter,
section 33, township 9, range 2, 35 acres, paid in part.
- Nesmith, Alex N. Feb. 13, 1880, north half of northwest quarter, sec-
tion 25, township 9, range 2, 80 acres, paid in part.
- Nesmith, Alex N. Feb. 13, 1880, northwest fractional quarter of north-
east fractional quarter, section 25, township 9, range 2, 40 acres, paid
in part.

- Noel, L. A. June 21, 1883, northeast fractional part C, section 23, township 9, range 3, 50 acres, paid in part.
- Norman, Jno. M. April 19, 1880, south half of southeast quarter, section 23, township 8, range 2, 80 acres, paid in part.
- Norman, Jno. W. Feb. 27, 1882, northwest quarter of southwest quarter, section 27, township 8, range 2, 40 acres, paid in part.
- Nelson, W. W. Dec. 22, 1882, northwest quarter of northeast quarter, section 31, township 9, range 3, 40 acres, paid in part.
- Neely, T. G. Nov. 19, 1880, north half of southwest quarter, section 29, township 9, range 5, 80 acres, paid in part.
- Neely, F. M. Nov. 19, 1880, north half of northeast quarter, section 29, township 9, range 5, 80 acres, paid in part.
- Owens, Jas. R. Feb. 16, 1880, southwest fractional quarter of southwest fractional quarter, section 35, township 9, range 2, 40 acres, paid in part.
- Owens, Owen. Oct. 11, 1880, southeast fractional quarter C of southwest fractional quarter, section 23, township 9, range 3, 40 acres, paid in part.
- 183 Ogden, Nathaniel A. Aug. 10, 1880, northwest quarter of southeast quarter, section 7, township 9, range 3, 40 acres, paid in part.
- Price, Jno. M. July 26, 1881, east half of northeast quarter, section 29, township 9, range 4, 80 acres, paid in part.
- Price, Tom. Dec. 22, 1879, southeast quarter of northeast quarter, section 27, township 7, range 4, 40 acres, paid in part.
- Painter, M. H. Jan. 9, 1880, south half of southeast quarter, section 23, township 8, range 5, 80 acres, paid in part.
- Peppers, Tilman M. Aug. 30, 1881, northwest quarter of southwest quarter, section 23, township 9, range 5, 40 acres, paid in part.
- Peppers, Tilman M. Aug. 30, 1881, west half of southwest quarter of southwest quarter, section 23, township 9, range 5, 20 acres, paid in part.
- Phillips, J. Z. Dec. 3, 1879, northwest quarter of southeast quarter, section 9, township 7, range 5, 40 acres, paid in part.
- Powell, Jas. C. March 2, 1882, lots Nos. 1, 8, and 9, east half of northeast quarter, and northeast quarter of southeast quarter, section 29, township 10, range 5, 120 acres, paid in part.
- Powell, J. R. Feb. 17, 1883, northwest quarter of northeast quarter, section 29, township 10, range 5, 40 acres, paid in part.
- Powell, Vickley. Nov. 30, 1880, southeast quarter of northwest quarter and northeast quarter of southwest quarter, section 1, township 9, range 4, 80 acres, paid in part.
- Pinkerton, A. Y. Dec. 8, 1879, east half of southeast quarter, section 13, township 9, range 4, 80 acres, paid in part.
- Plunket, J. B. Nov. 22, 1880, northwest quarter and northeast quarter of southwest quarter, section 15, township 10, range 3, 200 acres, paid in part.
- Plunket, C. S. Nov. 9, 1880, northeast quarter, section 15, township 10, range 3, 160 acres, paid in part.
- Pricer, Jno. M. Sept. 15, 1883, southeast quarter, section 19, township 9, range 4, 160 acres, paid in part.

- Peters, Jno. W. Aug. 3, 1880, south half of northeast quarter and northwest quarter of northeast quarter, section 5, township 8, range 5, 120 acres, paid in part.
- 184 Pritchett, Willie. Nov. 24, 1881, southeast quarter of northwest quarter, and south half of northeast quarter, and northwest quarter of southeast quarter, section 7, township 9, range 4, 160 acres, paid in part.
- Ray, Aaron. Oct. 25, 1881, south half of southwest fractional quarter, Nos. 16 and 17 of fractional section 19, township 9, range 5, 82 acres, paid in part.
- Reed, H. C. April 22, 1885, southwest quarter of northwest quarter and northwest quarter of northwest quarter, section 7, township 9, range 2, 80 acres, paid in part.
- Randall, John. Aug. 12, 1880, southwest quarter of southeast quarter, section 21, township 9, range 4, 40 acres, paid in part.
- Rove, John K. Nov. 23, 1882, southeast quarter and southeast quarter of northeast quarter, section 15, township 9, range 5, 200 acres, paid in part.
- Roden, Hugh. Nov. 17, 1882, north half of northwest quarter and southwest quarter of northwest quarter, section 33, township 8, range 5, 120 acres, paid in part.
- Roden, W. H. March 30, 1880, southwest quarter of northeast quarter, section 9, township 8, range 5, 40 acres, paid in part.
- Rice, Frank C. Nov. 13, 1880, north half southeast quarter, section 17, township 9, range 5, 80 acres, paid in part.
- Raines, Samuel. Dec. 2, 1881, southeast quarter of northeast quarter and northeast quarter of southeast quarter, section 23, township 10, range 3, 80 acres, paid in part.
- Raines, Roland. Dec. 8, 1879, south half of northwest quarter, section 25, township 10, range 3, 80 acres, paid in part.
- Raines, Ignatius. Oct. 26, 1874, east half northwest quarter, section 3, township 8, range 4, 80 acres, paid in part.
- Raines, W. R. Jan. 14, 1880, northeast quarter of northwest quarter, section 1, township 8, range 4, 40 acres, paid in part.
- Raines, W. R. Feb. 2, 1876, northeast quarter of northeast quarter, section 3, township 8, range 4, 40 acres, paid in part.
- Raines, R. B. Sept. 12, 1884, northeast quarter, section 15, township 10, range 2, 160 acres, paid in part.
- Raines, William M. Feb. 21, 1883, east half northeast quarter, section 31, township 7, range 5, 80 acres, paid in part.
- 185 Raines, Willis H. Nov. 21, 1876, southwest quarter of northwest quarter, section 25, township 7, range 4, 40 acres paid in part.
- Raines, George M. Jan. 17, 1880, northwest quarter of northwest quarter, section 7, township 8, range 5, 40 acres, paid in part.
- Raines, Josiah. Jan. 15, 1877, northeast quarter of southeast quarter, section 5, township 8, range 5, 40 acres, paid in part.
- Roberts, Asa. Nov. 10, 1881, north half of southwest quarter and southeast quarter of northwest quarter, section 17, township 9, range 5, 120 acres, paid in part.
- Roberts, John F. Aug. 1, 1883, northeast quarter of southwest quarter, section 5, township 10, range 5, 40 acres, paid in part.

- Roberts, S. B. Jan. 10, 1880, north half of northwest quarter, section 25, township 9, range 4, 80 acres, paid in part.
- Roden, Suger. Dec. 3, 1881, northwest quarter and south half of northeast quarter, section 7, township 10, range 3, 240 acres, paid in part.
- Richards, F. M. Dec. 16, 1881, east half of southwest quarter, section 9, township 10, range 3, 80 acres, paid in part.
- Rayburn, S. K. Nov. 10, 1873, southwest quarter of northwest quarter, section 5, township 9, range 4, 40 acres, paid in part.
- Russell, A. G. Jan. 13, 1873, northeast quarter of northwest quarter, section 21, township 8, range 3, 40 acres, paid in part.
- Sanders, J. A. June 18, 1884, southwest quarter of northeast quarter and southeast quarter of northwest quarter and northwest quarter of southeast quarter and northeast quarter of southwest quarter, section 31, township 8, range 4, 160 acres, paid in part.
- Sparks, J. T. Dec. 28, 1880, east half of northeast quarter, section 7, township 8, range 4, 80 acres, paid in part.
- Sparks, J. T. Jan. 12, 1880, northeast quarter of southwest quarter, section 17, township 8, range 4, 80 acres, paid part.
- 186 Sparks, J. T. Oct. 21, 1879, north half of southeast quarter, section 13, township 8, range 3, 80 acres, paid in part.
- Sparks, Merida. Dec. 17, 1878, east half of northwest quarter, section 1, township 10, range 4, 80 acres, paid in part.
- Sparks, Merida. Sept. 13, 1879, south half of southwest quarter, section 17, township 9, range 5, 80 acres, paid in part.
- Stewart, W. M. Sept. 26, 1882, northeast quarter of southwest quarter and southwest quarter of northeast quarter and southeast quarter of northwest quarter, section 13, township 9, range 3, 120 acres, paid in part.
- Slaton, F. A. Jan. 2, 1880, northwest quarter of northwest quarter section 35, township 9, range 4, 40 acres, paid in part.
- Slaton, Willis. Dec. 31, 1879, northeast quarter of southwest quarter, section 33, township 7, range 4, 40 acres, paid in part.
- Slaton, W. S. March 5, 1881, northeast quarter of northwest quarter, section 3, township 8, range 4, 40 acres, paid in part.
- Slaton, Uriah. Nov. 29, 1880, south half of southeast quarter, section 7, township 8, range 5, 80 acres, paid in part.
- Sharpton, D. L. Aug. 23, 1881, north half of northeast quarter, section 35, township 9, range 5, 80 acres, paid in part.
- Sharpton, Robert W. Aug. 23, 1881, southeast quarter of southeast quarter and northeast quarter of section 27, township 9, range 5, 200 acres, paid in part.
- Screws, George W. Nov. 24, 1881, northwest fractional quarter, embracing lots No. 4, 5, 6 and 7, section 19, township 9, range 5, 150 acres, paid in part.
- Sims, James A. Jan. 19, 1878, southeast quarter of southwest quarter, section 7, township 9, range 4, 40 acres, paid in part.
- Summers, J. D. Aug. 29, 1881, southwest quarter of northwest quarter and northeast quarter of northwest quarter, section 3, township 10, range 5, 80 acres, paid in part.
- Stockstill, James. Aug. 13, 1881, southeast quarter of northeast quarter, section 35, township 9, range 5, 40 acres, paid in part.

- Scott, B. H. H. Sept. 28, 1881, east half of southwest quarter, section 7, township 9, range 4, 80 acres, paid in part.
- 187 Scott, Agrippa. Oct. 3, 1881, north half of northeast quarter, section 15, township 9, range 4, 80 acres, paid in part.
- Scott, John H. Oct. 4, 1883, northeast quarter of northwest quarter and northwest quarter of northeast quarter, section 35, township 8, range 4, 80 acres, paid in part.
- Stephenson, James P. Jan. 18, 1881, southeast quarter, section 7, township 9, range 5, 160 acres, paid in part.
- Stone, J. T. Sept. 3, 1883, east half of northeast quarter, section 13, township 9, range 1, 80 acres, paid in part.
- Shipp, A. B. Feb. 6, 1880, north half of northeast quarter, section 23, township 8, range 4, 80 acres, paid in part.
- Sampson, William. Jan. 17, 1880, northwest quarter of southwest quarter, section 5, township 9, range 3, 40 acres, paid in part.
- Sampson, James. Jan. 19, 1880, northeast quarter of southeast quarter, section 7, township 9, range 3, 40 acres, paid in part.
- Scruggs, James. Dec. 27, 1879, fractional D, 52 acres, being northwest fractional quarter of southwest fractional quarter, section 19, township 9, range 3, 52 acres, paid in part.
- Smith, John. Sept. 16, 1882, east half of northeast quarter and northeast quarter of southeast quarter, section 5, township 10, range 5, 160 acres, paid in part.
- Smith, John. Feb. 24, 1880, south half of southeast quarter and west half of northeast quarter, section 5, township 10, range 5, 80 acres, paid in part.
- Smith, John. Feb. 2, 1883, northwest quarter of northwest quarter, section 9, township 10, range 5, 40 acres, paid in part.
- Smith, Thomas. Sept. 25, 1881, northwest quarter of southwest quarter, section 33, township 9, range 4, 40 acres, paid in part.
- Smith, Geo. W. Dec. 27, 1879, fractional C, 46 acres, and southeast quarter of southwest quarter, section 19, township 9, range 3, 86 acres, paid in part.
- Smith, Katherine. Feb. 27, 1880, northwest quarter of northeast quarter, section 25, township 8, range 3, 40 acres, paid in part.
- 188 Turner, John. Oct. 29, 1881, south half of southeast quarter, section 9, township 9, range 3, 80 acres, paid in part.
- Thrasher, Thomas B. July 31, 1882, south half of northeast quarter, section 17, township 10, range 5, 80 acres, paid in part.
- Thacker, B. J. Dec. 19, 1882, east half of northeast quarter, section 27, township 9, range 3, 80 acres, paid in part.
- Torpey, Joseph. Nov. 23, 1880, southwest quarter of northwest quarter, section 7, township 8, range 4, 40 acres, paid in part.
- Thomas, William D. Sept. 19, 1881, northeast quarter of northwest quarter, section 21, township 9, range 5, 40 acres, paid in part.
- Thomas, G. W. April 19, 1882, northeast quarter of southwest quarter and lots C, D, and E, section 31, township 8, range 2, 120 acres, paid in part.
- Terrill, James M. July 19, 1890, southwest quarter of southwest quarter, section 27, township 7, range 4, 40 acres, paid in part.
- Terrill, J. J. Oct. 27, 1879, southwest quarter of southwest quarter, section 27, township 9, range 4, 40 acres, paid in part.

- Taylor, Joseph. Sept. 23, 1882, south half of southwest quarter, section 9, township 9, range 4, 80 acres, paid in part.
- Terrill, Robert C. Oct. 2, 1879, southwest quarter of southeast quarter and southeast quarter of southwest quarter, section 27, township 7, range 4, 80 acres, paid in part.
- Thomas, W. D. Dec. 19, 1881, northwest quarter of northwest quarter, section 21, township 9, range 5, 40 acres, paid in part.
- Tucker, Mary A. Sept. 27, 1879, north half of northwest quarter, section 35, township 7, range 4, 80 acres, paid in part.
- Thrasher, W. J. March 25, 1882, north half of southeast quarter Nos. 9 and 10 and southeast fractional quarter of southwest fractional quarter and lot No. 14, section 17, township 9, range 2, 100 acres, paid in part.
- Turner, Samuel M. Nov. 15, 1881, east half of southeast quarter, section 33, township 9, range 3, 80 acres, paid in part.
- Tyson, B. F. May 25, 1881, southeast quarter of southwest quarter, section 1, township 9, range 4, 40 acres, paid in part.
- 189 Thaxton, J. M. C. Dec. 22, 1881, east half of southwest quarter section 5, township 9, range 4, 80 acres, paid in part.
- Thaxton, J. M. C. Jan. 3, 1883, northeast quarter of southwest quarter, section 7, township 9, range 4, 40 acres, paid in part.
- Upchurch, J. C. Dec. 30, 1879, south half of southeast quarter, section 33, township 9, range 4, 80 acres, paid in part.
- Vaughn, M. M. July 28, 1882, north half of northwest quarter and southeast quarter of northwest quarter and northeast quarter of southwest quarter, section 17, township 9, range 4, 160 acres, paid in part.
- Vernon, W. E. Nov. 29, 1881, west half of northeast quarter and northeast quarter of northwest quarter, section 23, township 10, range 3, 120 acres, paid in part.
- Vest, James W. Nov. 7, 1881, northeast quarter of northwest quarter, section 9, township 9, range 3, 40 acres, paid in part.
- Wells, Wm. T. Dec. 9, 1881, northeast subdivision quarter of southeast fractional quarter and southeast subdivision of southeast fractional quarter, section 31, township 9, range 5, 129 acres, paid in part.
- Windsor, James J. Aug. 1, 1882, west half of northwest quarter, section 31, township 9, range 3, 80 acres, paid in part.
- Windsor, John D. Dec. 15, 1881, northwest quarter of northeast quarter, section 25, township 9, range 4, 40 acres, paid in part.
- Warrick, F. M. Sept. 3, 1883, southeast quarter of southwest quarter, section 7, township 9, range 2, 40 acres, paid in part.
- Watts, Samuel. Oct. 21, 1881, north half of northwest quarter, section 7, township 9, range 4, 80 acres, paid in part.
- Whitworth, Joseph. Jan. 21, 1880, southeast quarter of northeast quarter, section 41, township 8, range 3, 40 acres, paid in part.
- Walden, James T. April 5, 1884, north half of northwest quarter, section 7, township 9, range 4, 80 acres, paid in part.
- Windson, Amanda. March 24, 1883, northeast quarter of northeast quarter, section 25, township 9, range 4, 40 acres, paid in part.
- 190 Whitfield, Ivey E. Dec. 11, 1882, southeast quarter of southwest quarter, section 31, township 9, range 3, 40 acres, paid in part.

- Wade, William K. Dec. 19, 1879, south half of southeast quarter, section 1, township 10, range 3, 80 acres, paid in part.
- Webb, H. S. Dec. 16, 1879, northeast quarter of southeast quarter, section 27, township 8, range 4, 40 acres, paid in part.
- Whitworth, Andrew. Aug. 14, 1882, southwest quarter of southwest quarter, section 29, township 8, range 3, 40 acres, paid in part.
- Walden, Benjamin. Jan. 15, 1883, south half of southeast quarter, section 1, township 9, range 3, 80 acres, paid in part.
- Willaby, Charley. Jan. 22, 1881, southeast quarter of southwest quarter, section 33, township 7, range 4, 40 acres, paid in part.
- Windsor, J. D. Dec. 4, 1879, south half of northwest quarter, section 25, township 9, range 4, 80 acres, paid in part.
- Wells, Z. G. Sept. 17, 1885, north half of northwest quarter and southeast quarter of southwest quarter, section 31, township 9, range 4, 120 acres, paid in part.
- Walker, J. T. Oct. 4, 1883, northwest quarter of northwest quarter, section 1, township 9, range 4, 40 acres, paid in part.
- Walker, J. T. Oct. 4, 1883, southeast quarter of southeast quarter, section 35, township 8, range 4, 40 acres, paid in part.
- Williams, H. W. Aug. 22, 1881, southwest quarter of northeast quarter and southeast quarter of northwest quarter, section 7, township 9, range 4, 80 acres, paid in part.
- Wright, C. D. Aug. 9, 1881, north half of southeast quarter and southeast quarter of northeast quarter, section 33, township 9, range 4, 120 acres, paid in part.
- Wyeth, Louis. July 4, 1873, south half of northeast quarter, section 29, township 8, range 4, 80 acres, paid in part.
- Wyeth, Louis. July 4, 1873, north half of northwest quarter, section 29, township 8, range 4, 80 acres, paid in part.
- Wyeth, Louis. July 4, 1873, southeast quarter of northwest quarter, section 23, township 8, range 3, 40 acres, paid in part.
- Wyeth, Louis. June 20, 1873, northwest quarter of northeast quarter, section 23, township 8, range 3, 40 acres, paid in part.
- Wood, B. J. Dec. 8, 1879, northwest quarter of southeast quarter and 15 acres off south part southwest quarter of northeast quarter, section 11, township 9, range 4, 55 acres, paid in part.
- Watts, D. D. Nov. 23, 1880, southeast quarter of northeast quarter and northeast quarter of southeast quarter, section 29, township 9, range 5, 80 acres, paid in part.
- White, Wiley. Sept. 6, 1881, southeast quarter of northeast quarter, section 21, township 9, range 5, 40 acres, paid in part.
- Wright, James M. Dec. 4, 1879, west half of southwest quarter, section 13, township 10, range 3, and northeast quarter of northeast quarter, section 23, township 10, range 3, 120 acres, paid in part.
- Weaver, Nathan. Dec. 5, 1879, west half of northwest quarter, section 7, township 8, range 5, 80 acres, paid in part.
- Whitworth, Jas. Jan. 21, 1880, southeast quarter of northeast quarter, section 31, township 8, range 3, 40 acres, paid in part.
- Young, W. J. Sept. 15, 1883, southwest quarter of northwest quarter, section 35, township 8, range 4, 40 acres, paid in part.

Young, J. M. Sept. 6, 1883, south half of southeast quarter, and southeast quarter of southwest quarter, section 11, township 9, range 1, 120 acres, paid in part.

Collier, Jno. N. Oct. 29, 1881, south half of northeast quarter, section 25, township 9, range 3, 80 acres, paid in part.

Scott, Calvin. Dec. 22, 1879, northeast quarter of northeast quarter, section 35, township 9, range 3, 40 acres, paid in part.

Baker, A. P. Sept. 1, 1880, northwest quarter of northeast quarter, and northeast quarter of northwest quarter, section 13, township 9, range 3, 80 acres, paid in part.

192 Powell, James M. Oct. 13, 1883, south half of southeast quarter, section 15, township 9, range 4, 80 acres, paid in part.

Robertson, John H. Jan. 10, 1880, west half of southwest quarter, section 35, township 8, range 4, 80 acres, paid in part.

Lusk, T. B. Jan. 2, 1888, south half of southwest quarter and southwest quarter of southeast quarter, section 19, township 8, range 4, 120 acres, paid in full.

King, Andy. Sept. 29, 1875, southwest quarter of northeast quarter, section 27, township 7, range 4, 40 acres, paid \$20.

Bush, Geo. W. Aug. 13, 1876, northeast quarter of southeast quarter, section 27, township 7, range 4, 40 acres, paid \$20.

Winston, Jno. G., sr. March 2, 1885, northeast quarter of northwest quarter, section 17, township 7, range 5, 40 acres, paid \$20.

Murphrey, Robt. G. March 2, 1885, northwest quarter of southwest quarter, section 17, township 7, range 5, 40 acres, paid \$20.

Rayburn, S. K. May 2, 1887, southeast quarter and east half of southwest quarter, section 9, township 9, range 4, 240 acres, paid in full, afterwards bought by H. Carlisle.

Bains, S. M. July 11, 1883, southwest quarter of northwest quarter and northwest quarter of southwest quarter, section 3, township 9, range 4, 80 acres, paid in full, afterwards bought by H. Carlisle.

Mathis, James, and Shields, David H. Nov. 7, 1887, northeast quarter of northeast quarter, section 35, township 8, range 4, 40 acres, paid in full, afterwards bought by H. Carlisle at chancery sale, sixteenth district, northern division.

McKinney, Samuel D. Feb. 7, 1890, southwest quarter of southwest quarter, and southeast quarter of southwest quarter and southwest quarter of southeast quarter, section 33, township 8, range 4, 120 acres, paid in full, afterwards bought by H. Carlisle.

Knox, W. E. and A. L. Sept. 14, 1889, southeast quarter of northwest quarter, section 1, township 12, range 5, 40 acres, paid in full, afterwards bought by H. Carlisle.

Collier, Jesse W. Feb. 10, 1883, north and west fractional part C, 193 120 acres and southeast fractional part D, 50.50 acres in northwest quarter of section 23, township 9, range 3, 170 acres, paid in part.

Walden, James. Feb. 10, 1880, south half of northeast quarter and northeast quarter of northeast quarter, section 13, township 9, range 3, 40 acres, paid in part.

Carter, S. J. Dec. 16, 1879, southwest quarter of southeast quarter, section 11, township 9, range 3, 40 acres, paid in part.

- Bodine, Frank. Jan. 15, 1880, northeast quarter of southwest quarter, section 29, township 8, range 3, 40 acres, paid in part.
- Dye, C. M. Feb. 26, 1879, southeast quarter of northwest quarter, and northeast quarter of southwest quarter, section 35, township 8, range 4, 80 acres, paid in part.
- Miller, T. J. Nov. 30, 1881, part A. N., part northwest quarter of southeast quarter of northwest quarter, section 23, township 9, range 4, 105 acres, paid in part.
- Vaughn, Charles C. Jan. 8, 1880, south half of northeast quarter, section 5, township 8, range 4, 80 acres, paid in part.
- Robison, Z. D. March 18, 1880, northeast quarter of northwest quarter, section 27, township 8, range 4, 40 acres, paid in part.
- Bradley, J. K. Oct. 5, 1881, fractional B. and C. and southwest quarter of northeast quarter, section 23, township 9, range 4, 135 acres, paid in part.
- Benton, Jeremiah. Feb. 26, 1879, southeast quarter of southwest quarter and southwest quarter of southeast quarter, section 35, township 8, range 4, 80 acres, paid in part.
- Powell, Wm. M. Nov. 4, 1879, southeast quarter of southeast quarter, section 35, township 8, range 4, 39 acres, paid in part.
- Smith, Luke. Feb. 10, 1880, east half of southwest quarter and northwest quarter of southeast quarter, section 11, township 9, range 3, 120 acres, paid in part.
- Duvall, John L. Jan. 13, 1882, south half of southwest quarter, section 9, township 9, range 3, 80 acres, paid in part.
- Comer or Cowan, James W. Jan. 29, 1880, lot C, southeast fractional quarter of northwest fractional section 19, township 9, range 3, 46 acres, paid in part.
- 194 Brown, B. W. Aug. 11, 1883, north half of northwest quarter, section 23, township 9, range 4, 80 acres, paid in part.
- Bartlett, B. C. Feb. 23, 1881, southwest quarter of northeast quarter and southeast quarter of northwest quarter, section 3, township 9, range 4, 80 acres, paid in part.
- Bennefield, Chas. Oct. 13, 1883, south half of southeast quarter, section 15, township 9, range 4, 80 acres, paid in part.
- York, S. M. Sept. 26, 1881, northwest quarter, section 15, township 9, range 4, 160 acres, paid in part.
- Moore, E. W. Nov. 10, 1879, northwest quarter of northwest quarter, section 33, township 8, range 4, 40 acres, paid in part.
- Phillips, R. W. Jan. 19, 1880, east half of northwest quarter, section 21, township 8, range 4, 80 acres, paid in part.
- Collier, Joshua. Sept. 25, 1880, northeast quarter, section 31, township 9, range 3, 160 acres, paid in part.
- Bush, W. H. Feb. 21, 1880, northwest quarter of northeast quarter, section 9, township 8, range 4, 40 acres, paid in part.
- Nixon, Stephen H. Sept. 12, 1881, northwest quarter of southeast quarter and northeast quarter of southwest quarter and southeast quarter of northwest quarter, section 31, township 9, range 3, 120 acres, paid in part.
- Woodham, E. D. Feb. 9, 1880, east half of southeast quarter and southwest quarter of southeast quarter, section 31, township 9, range 3, 120 acres, paid in part.

- Mathews, F. P. Nov. 24, 1884, south half of southeast quarter, section 25, township 9, range 3, 80 acres, paid in part.
- Conn, E. P. Feb. 6, 1882, northeast fractional part C, 50 acres and northwest fractional part A, 65 acres, of northeast quarter of fractional section 23, township 9, range 3, 115 acres, paid in part.
- Camp, Wm. J. Dec. 22, 1882, south half of southwest quarter, section 21, township 9, range 3, 80 acres, paid in part.
- Stone, Wm. T. March 6, 1880, southeast quarter of northeast quarter, section 25, township 8, range 3, 40 acres, paid in part.
- Mathews, Manda. Feb. 27, 1879, west half of southwest quarter of northeast quarter and west half of northwest quarter of 195 southeast quarter, section 27, township 8, range 4, 40 acres, paid in part.
- Webb, H. S. Feb. 22, 1879, south half of northeast quarter and northwest quarter of southeast quarter, section 27, township 8, range 4, 120 acres, paid in part.
- Brown, D. W. Dec. 14, 1881, northeast quarter of southeast quarter, section 9, township 9, range 3, 40 acres, paid in part.
- Critcher, James. Aug. 31, 1880, southwest quarter of southeast quarter and northwest quarter of northwest quarter, sections 3 and 11, township 8, range 4, 80 acres, paid in part.
- Tidmore, J. D. Sept. 13, 1882, east half of southwest quarter and southeast quarter of northwest quarter, section 3, township 9, range 3, 120 acres, paid in part.
- Neuba, Jesse. Jan. 6, 1881, northwest quarter of southwest quarter, section 3, township 9, range 3, 40 acres, paid in part.
- Matchen, Jas. Henry. Jan. 17, 1880, southwest quarter of southwest quarter, section 3, township 9, range 3, 40 acres, paid in part.
- Critcher, Harriet. Nov. 8, 1882, south half of southwest quarter, section 3, township 8, range 4, 80 acres, paid in part.
- Weaver, Willie C. Nov. 16, 1881, northeast quarter of southwest quarter, section 35, township 8, range 3, 40 acres, paid in part.
- Carter, Seaborn J. June 21, 1880, southwest quarter of northwest quarter, section 13, township 9, range 3, 40 acres, paid in part.
- Meaders, James. Nov. 16, 1882, southwest quarter of southwest quarter, section 13, township 9, range 3, 40 acres, paid in part.
- Darnell, William A. March 3, 1880, southeast quarter of southwest quarter northwest quarter of southwest quarter and southwest quarter of northwest quarter, section 25, township 8, range 3, 120 acres, paid in part.
- Tucker, H. H. Nov. 29, 1881, west half of northwest quarter and west half of southwest quarter, section 15, township 9, range 4, 160 acres, paid in part.
- Peugh, J. J. Nov. 10, 1879, west half of southeast quarter and east half of southwest quarter, section 29, township 8, range 4, 160 acres, paid in part.
- 196 Young, John H. Sept. 18, 1880, west half of northeast quarter and west half of southeast quarter and east half of northwest quarter and east half of southwest quarter, section 15, township 9, range 4, 320 acres, paid in part.
- Madera, James T. Jan. 24, 1881, north half of northwest quarter, section 13, township 9, range 3, 80 acres, paid in part.

- Gregory, M. N. Dec. 2, 1879, north half of northeast quarter, section 3, township 9, range 3, 80 acres, paid in part.
- Long, Robert. Jan. 13, 1881, southwest quarter of northwest quarter, section 3, township 9, range 3, 40 acres, paid in part.
- Sorter, Nancy. Jan. 15, 1881, northeast quarter of northwest quarter, section 3, township 9, range 3, 40 acres, paid in part.
- Davidson, Dave. Dec. 17, 1880, northwest quarter of northwest quarter, section 13, township 9, range 3, 40 acres, paid in part.
- Reynolds, J. V. March 2, 1882, west half of northeast quarter and southeast quarter of southeast quarter, section 35, township 8, range 3, 120 acres, paid in part.
- Bolin, James. Jan. 13, 1881, northeast quarter of southwest quarter, section 3, township 9, range 3, 40 acres, paid in part.
- Williams, J. M. May 25, 1882, southeast quarter of northeast quarter and 25 acres off of north part of southwest quarter of northeast quarter, section 11, township 9, range 4, 65 acres, paid in part.
- Frasier, William R. Dec. 5, 1879, north half of northeast quarter, section 11, township 9, range 4, 80 acres, paid in part.
- Johnson, Luther. Oct. 31, 1885, south half of southeast quarter, section 27, township 8, range 4, 80 acres, paid in part.
- Scott, Pinckney N. Sept. 16, 1881, southeast quarter of southeast quarter, section 29, township 8, range 4, 40 acres, paid in part.
- Cornelius, W. F. Jan. 17, 1881, south half of northwest quarter and north half of southwest quarter, section 9, township 9, range 3, 160 acres, paid in part.
- Love, W. L. Dec. 9, 1882, northeast quarter of southeast quarter and south half of northeast quarter and southeast quarter of northwest quarter, section 11, township 9, range 3, 160 acres, paid in part.
- 197 Patterson, Sampson. July 3, 1879, northwest quarter of southwest quarter and southwest quarter of northwest quarter, section 33, township 8, range 4, 80 acres, paid in part.
- Gadsden Mineral Land Company. Feb., 1887, southeast quarter of northeast quarter, section 27, township 11, range 6, and southeast quarter of southwest quarter, section 23, township 11, range 6, and southwest quarter of southeast quarter, section 23, township 11, range 6, and southeast quarter of northeast quarter, section 23, township 11, range 6, and southeast quarter of southeast quarter, section 13, township 11, range 6, 200 acres, paid in full.
- Knox, Walter E. April 18, 1887, southeast quarter of northwest quarter, section 1, township 12, range 5, 40 acres, paid in full.
- Christopher & Stewart. Feb., 1887, fractional section 3, township 12, range 5, 40 acres, paid in full.
- Harper, W. W. April 5, 1884, northwest quarter of southeast quarter, section 25, township 8, range 3, 40 acres, paid in full. This land was sold in chancery sale and bought in by Hugh Carlisle; money deposited in Bank of Guntersville; sale, February 17, 1890.
- Hewett, Jefferson. Northeast quarter of southeast quarter and southeast quarter of northeast quarter, section 3, township 9, range 4, 80 acres, paid in full. This land was sold in chancery sale and bought in by Hugh Carlisle; money deposited in Bank of Guntersville; sale, April 14, 1890.

Ray, Asa. Nov. 9, 1887, southwest quarter of southeast quarter, section 5, township 9, range 4, 40 acres, paid in full.

McLaughlin, A. J. West half of northwest quarter, section 5, township 10, range 5, 80 acres, paid in part.

Olderfield, Tom. East half of northwest quarter, section 5, township 10, range 5, 80 acres, paid in part.

Weaver, Henry. Aug. 8, 1887, southeast quarter of southeast quarter, section 27, township 7, range 4, 40 acres, paid in part.

Dickson, Mary. Aug. 27 and Jan. 19, 1880, southeast quarter of southwest quarter and southwest quarter of southwest quarter, section 29, township 7, range 5, 80 acres, paid in part.

198 Billingsley, John J. Jan. 7, 1882, southwest quarter of southwest quarter, section 33, township 8, range 2, 40 acres, paid in part.

Hugh Carlisle. Feb. 7, 1887, described in deed, 23,739.51 acres, paid in full.

Hugh Carlisle. April 4, 1887, described in deed, 17,410.33 acres, paid in full.

Total number of acres sold, 83,522.84.

Lands reconveyed to the United States by the Tennessee & Coosa Railroad Company, 2,863.21 acres.

Total number of acres, 86,386.05.

199 *Lands reconveyed to the United States by the Tennessee & Coosa R. R. Co.*

EXHIBIT B TO ANSWER OF HUGH CARLISLE.

West half northwest quarter, section 23, township 8, range 4, 80.19 acres—D. S. 3,646, Drecillia Jordan, Dec. 10 and 12, 1853.

North half northwest quarter, section 27, township 8, range 4, 79.98 acres—D. S. 2,721 Mary Mathis, May 8, 1851.

D. S. 1,371, J. Baker, Feb. 1, 1847.

Southeast quarter of southeast quarter, section 29, township 8, range 4, 40.06 acres—D. S. 3,425, Jacob Reed, February 12 and 14, 1853.

Northwest quarter of southwest quarter, west half of southeast quarter, section 31, township 8, range 4, 117.57 acres—D. S. 2,449, Samuel Hargrove, Oct. 22, 1850.

West half of northwest quarter, section 33, township 8, range 4, 80.33 acres—D. S. 1,969, Lucinda Bailey, June 23, 1848.

Southeast quarter of northeast quarter, section 3, township 9, range 4, 40 acres—D. S. 3,653, John Baker, Dec. 15 and 28, 1852.

Northwest quarter, section 9, township 9, range 4, 160.04 acres—D. S. 4,601, Jesse Jones, Feb. 25 and 26, 1856—D. S. 3,359, Vincent Jones, Dec. 31, 1852.

Northeast quarter, section 9, township 9, range 4, 160.04 acres—D. S. 4,602, William Ellis, Feb. 25 and 26, 1856.

South half of southeast quarter, section 11, township 9, range 4, 79.93 acres—D. S. 3,175, Wm. Nichols, Aug. 16 and 28, 1852.

Northwest quarter of northeast quarter, section 33, township 8, range 5, 39.98 acres—D. S. 2,201, Lafayette Reed, Jan. 22, 1850.

Northeast quarter of southeast quarter, section 33, township 8, range 5, 39.98 acres—D. S. 3,319, Abram Spicy, Oct. 26 and Nov. 29, 1852.

Northwest quarter of southeast quarter, section 5, township 200 9, range 5, 39.95 acres—D. S. 3,301, Wm. F. Funderbush, Nov. 11 and 12, 1852.

Southeast quarter of southeast quarter, section 5, township 9, range 5, 3,995 acres—D. S. 3,302, Margery D. Funderbush, Nov. 11 and 12, 1852.

Lots 4 and 5, section 7, township 9, range 5, 104.48 acres—D. S. 3,663, John Cook, Dec. 1 and 3, 1853.

Southwest quarter of southeast quarter, section 9, township 9, range 5, 39.31 acres—D. S. 2,960, D. E. Harris, Dec. 15 and 16, 1851; D. S. 3,005, Mose Bates, Dec. 8, 1851, and Jan. 6, 1852.

Northwest quarter of southwest quarter, section 25, township 8, range 3, 40.69 acres—D. S. 2,446, Aaron Leslie, Oct. 22, 1850.

South half of southeast quarter, section 33, township 8, range 3, 79.75 acres—D. S. 2,452, Henry W. Long, Oct. 22, 1850.

South half of northwest quarter, section 35, township 8, range 3, 80.26 acres—D. S. 2,433, Harrell Wright, Oct. 11, 1850.

West half of southeast quarter and northeast quarter of southwest quarter, section 35, township 8, range 3, 120.39 acres—D. S. 2,450, Mathis Little, Oct. 22, 1850.

West half of northeast quarter, section 35, township 8, range 3, 80.26 acres—D. S. 3,501, Jno. Tidwell, Aug. 22, 1853.

Southeast quarter of southwest quarter, section 1, township 9, range 3, 40.12 acres—D. S. 2,644, Marshall Gregory, Jan. 27, 1851.

Southeast quarter of southeast quarter, section 3, township 9, range 3, 40.08 acres—D. S. 4,645, James Barnes, July 4 and 7, 1856.

East half of southeast quarter, section 15, township 9, range 3, 80.12 acres—D. S. 2,644, Wm. C. Harbin, June 28 and 30, 1856.

East half of northeast quarter, section 35, township 7, range 4, 80.48 acres—D. S. 2,754, Wm. F. Sturgess, Aug. 1 and 6, 1851.

West half of northwest quarter, section 1, township 8, range 4, 80.08 acres—D. S. 4,358, Geo. S. Hancy, Aug. 21, 1855; D. S. 3,579, Chas. Hovey, April 29 and Oct. 27, 1853.

Southeast quarter of northwest quarter, section 17, township 8, range 4, 39.96 acres—D. S. 1,478, Pat Bailey, Aug. 3, 1847.

West half of northeast quarter, section 21, township 8, range 201 4, 79.61 acres—D. S. 4,494, Jesse Baugh, Dec. 6 and 8, 1855;

D. S. 4,875, Albert Garmon, Nov. 24 and 27, 1854.

Northeast quarter of northwest quarter, section 9, township 9, range 5, 39.91 acres—D. S. 1,915, Sarah Miller, Jan. 30, 1849.

Southwest quarter of northwest quarter, section 11, township 9, range 5, 39.95 acres—D. S. 1,412, S. Meeks, March 5, 1847.

Southwest quarter section 11, township 9, range 5, 159.82 acres—D. S. 4,576, Eli Sullivan, Feb. 1 and 2, 1856—D. S. 4,695, Wm. M. Ingram, Oct. 21 and 23, 1856.

North half of northwest quarter and southeast quarter of northwest quarter, section 15, township 9, range 5, 120.07 acres—D. S. 4,796, Christopher Turner, Jan. 29 and 31, 1857.

D. S. 4,578, Roland J. Turner and James N. Ingram, Feb. 1 and 2, 1856.

Area above, north half of northwest quarter of southeast quarter of northwest quarter and northeast quarter of southwest quarter, north half of northwest quarter, section 15, township 9, range 5, 40.03 acres—D. S. 4,200, Wm. M. Ingram, Jan. 3 and 10, 1855. D. S. 3,324, W. M. Ingram, Dec. 11, 1852.

Area above, northeast quarter of southwest quarter and northwest quarter of southwest quarter, section 15, township 9, range 5, 40.03 acres—D. S. 4,575, Wm. Carman, Feb. 2 and 3, 1856.

Northeast quarter of southwest quarter, section 21, township 9, range 5, 39.84 acres—D. S. 2,165, Robert Miller, Dec. 15, 1849.

East half of southeast quarter, section 23, township 9, range 5, 80.43 acres—D. S. 3,896, Noah Johnson, Oct. 17 and 19, 1854.

West half of southwest quarter, section 25, township 9, range 5, 79.93 acres—D. S. 694, Gideon——, Feb. 19 and 24, —.

West half of northwest quarter, section 29, township 9, range 5, 79.81 acres—D. S. 2,698, Green B. Garrett, March 3, 1857.

Southwest quarter of northwest quarter, section 3, township 10, range 5, 39.84 acres—D. S. 2,072, Jacob G. Miller, Nov. 6, 1849.

202 East half of southeast quarter and southwest quarter of southeast quarter, section 5, township 10, range 5, 119.36 acres—D. S. 3,482, John M. Finch, Aug. 5 and 8, 1853.

Total 2,863.21 acres.

The above tracts were approved to the State under the grant of June 3, 1856, for the benefit of the Coosa & Tennessee Rail-road on June 27, 1860.

(Endorsed:) Filed March 21, 1893. N. W. Trimble, clerk.

Order extending time to take testimony.

In the United States circuit court for the southern division of the northern district of Alabama.

| | |
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| THE UNITED STATES | } No. 40. In equity. |
| vs. | |
| HUGH CARLISLE. | |

In above-stated cause, upon motion of Hugh Carlisle, it is ordered that the time in which testimony may be taken in said cause be extended to the first Monday in September, 1893.

(Signed)

JOHN BRUCE, *Judge.*

Agreed:

PARSONS, *U. S. Attorney.*

MARCH 31, 1893.

(Endorsed:) Filed March 31, 1893. N. W. Trimble, clerk.

Minute entry of July 8, 1893.

| | | |
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| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD COM- pany, et als. | | |

This cause is continued until the next term of the Court.

Minute entry of September 27, 1893.

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| UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY et als. | | |

On motion of the solicitor for Hugh Carlisle, one of the respondents in the above-entitled cause, it is ordered that this cause be set down for hearing at Montgomery, Alabama, on the second Monday of December next, and by agreement of counsel, it is further ordered, and adjudged, that the decree herein to be rendered may be rendered in vacation, as if in term time.

It is further ordered, adjudged, and decreed, that all the parties to this cause be allowed until said second Monday of December next to take testimony herein.

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Notice to district attorney of taking testimony.

In the circuit court of the United States for the northern district of Alabama, at Birmingham, Ala.

| | | |
|---|---|--------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY et als. | | |

To Hon. EMMETT O'NEAL,

United States District Attorney, Northern District of Alabama.

Take notice that on Monday, the 4th day of December, 1893, Hugh Carlisle, one of the respondents in above stated cause, will proceed to examine orally, as witnesses on behalf of said respondent, before N. W. Trimble, esq., examiner of said court, at his office in Birmingham, the following-named persons, viz: H. L. Miller, Mark Johnson, and Hugh Carlisle, at which time and place you are notified to be present, if you desire to do so.

(Signed)

AMOS E. GOODHUE,
Solicitor for Carlisle.

Nov. 22, 1893.

Service acknowledged, this the 23d November, 1893.

EMMET O'NEAL, *U. S. Attorney.*

(Endorsed:) Filed November 25, 1893. N. W. Trimble, clerk.

In the circuit court of the United States, southern division, northern district of Alabama.

UNITED STATES

vs.

TENNESSEE AND COOSA RAILROAD COMPANY. }

No. 40. In equity.

Pursuant to notice duly given, the session of the examiner as convened in the clerk's office of the United States circuit court at Birmingham, Ala., on this 7th day of December, 1893. Present: N. W. Trimble, examiner; Mr. Goodhue; Mr. Emmet O'Neal, United States district attorney.

MR. HENRY L. MILLER, being duly sworn, upon examination, says:

By MR. GOODHUE:

Q. How old are you and where do you reside?

A. I am sixty-eight years old and reside four miles this side of Gunter'sville.

Q. What connection did you have with the Tennessee & Coosa River Railroad Company?

A. I was a stockholder and one of the board of directors for a good many years.

Q. When did you become a director of the company?

A. Ever since the war. I do not recollect the date.

Q. Were you a stockholder before the war?

A. Yes, sir.

Q. Do you know what work was done on the Tennessee & Coosa River Railroad Company before the war?

A. Yes, sir; there was a good deal of it. Some very heavy work was done just this side of Gunter'sville, on this side of the mountain. Some of it also on the far side of the mountain—that is, on the Gadsden side.

Q. Do you know whether Major Carlisle had anything to do with that work before the war?

A. Yes, sir; I know that he was the largest contractor there.

206 Q. Do you know whether the company was indebted to Major Carlisle?

A. Yes, sir; there was a balance due him on the books of about thirty thousand or forty thousand dollars; that is my recollection about it.

Q. What was that balance for?

A. For work that he did before the war.

Q. State what members of that board of directors are still alive.

A. Mr. Seibold, Mr. Boggs, Mr. Carlisle, and myself.

Q. Were you present at a meeting of the board of directors when they sold this land to Major Carlisle?

A. Yes, sir.

Q. What was the consideration that that land was sold for?

A. For work that he had done on the road—building and working on the road.

Q. Was there any arrangement that he was to hold the land for the company?

A. No, sir; I never heard anything of him holding the land for the railroad company.

Q. What was the transaction between him and the company in regard to the purchase of this land?

A. He was to take the land for what was due him for work on the road.

Q. At how much per acre did he buy the land?

A. He was to pay \$2.50 for some of it and \$1.25 per acre for part of it.

Q. Is it not a fact that he paid \$1.25 for the land which the company had a half interest in?

A. Yes, sir.

Q. What collusion was there between him and the company in regard to the future?

A. I never heard anything of it.

Q. Was there anything else in the transaction than the bargain and sale of the land that you know anything about?

A. No, sir; I never heard of it.

207 Q. Do you know what relation Mark Johnson had with the company?

A. He was the bookkeeper.

Q. Were you present at a meeting of the board of directors when he brought an account before the board of Major Carlisle's?

A. Yes, sir; he brought his books there before the board of directors; they were checked off and allowed by the board of directors. That was in 1887, I think; I have forgotten the date.

Q. Was he to take the land for what was due him in full, or at so much per acre?

A. It was a lumping trade, I think, at \$2.50 an acre.

Q. Was it a settlement in full, or was he to take the land for as far as it would go?

A. I think it was a settlement in full, as far as it would go.

Q. Do you know anything about the work done after the war?

A. Major Carlisle did the work since the war.

Q. What means did the company have to pay Mr. Carlisle?

A. The company had no money at all, only land. Major Carlisle furnished the money for everything that was done on the road.

(Signed)

HENRY L. MILLER.

Cross-examination will be concluded in the future. The session of the examiner was adjourned until January 23, 1894.

N. W. TRIMBLE, *Examiner*.

DECEMBER 7, 1895.

208

Testimony of Mark Johnson.

In United States circuit court, southern division, northern district of Alabama.

| | | |
|-------------------------------------|---|--------------------|
| UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE & COOSA RAILROAD COMPANY, | | |
| et als. | | |

Pursuant to notice, duly given, the session of the examiner was convened in the clerk's office of the United States court in this city on the

23d day of January, 1894. Present: N. W. Trimble, examiner; Amos Goodhue, attorney for Major Carlisle; Emmet O'Neal, United States district attorney; Frank S. White, assistant United States district attorney.

MARK JOHNSON, being duly sworn, on behalf of the defendant, says:

By Mr. GOODHUE:

Q. Where do you reside?

A. At present, at Notasulga, Ala.

Q. For what length of time were you bookkeeper for the Tennessee & Coosa Railroad Company?

A. From 1885 to 1887.

Q. Did you at any time attend a meeting of the board of directors of the Tennessee & Coosa Railroad Company?

A. Yes, sir; at Guntersville.

Q. Did you present to that board of directors any account?

A. Yes, sir; I did.

Q. Can you identify that paper?

(Witness is here shown a paper for identification which is marked Exhibit A, and is asked by the defendants to be introduced as evidence in the case.)

A. Yes, sir; that is my handwriting and the original account.

Q. What was done with that account at the meeting of the board?

A. It was presented to the board, and they checked it up and passed it.

209 Q. These checks that we find here in this account—by whom were they made?

A. By Mr. S. K. Rayburn, the secretary.

Q. Is this the original book of entry of the Tennessee and Coosa Railroad Company?

(Witness is here shown a book, marked Exhibit B, for identification, and is asked by the defendants to be introduced as evidence.)

A. Yes, sir.

Q. Did you keep that book?

A. Yes, sir.

Q. Do you know anything of the correctness of the entries in that book?

A. Yes, sir; they are all correct.

(Defendants here offer to introduce especially pages 199 to 223, inclusive, of Major Carlisle's account in book marked Exhibit B.)

Q. What was the condition of the railroad as to completion when you went there?

A. It was running from Gadsden to Attalla.

Q. What was done in connection with the construction of that road after that time?

A. Major Carlisle had a lot of teams and men at work extending it from Attalla to Littleton.

Q. How far is it from Attalla to Littleton?

A. About six miles.

Q. Do you know what resources the company had?

A. None at all that I am aware of.

- Q. Who supplied the money for the construction?
 A. Major Carlisle.
 Q. These cash items in that account—what was the money used for?
 A. For the construction of the road before and after the war. I can only speak from the time I went there.
 Q. Do you know who bought the iron?
 A. Yes, sir; Major Carlisle.
 Q. Do you know who bought the locomotives and cars?
 A. Major Carlisle.
 210 Q. You say you left there in 1887?
 A. No, sir; I did not leave the road until 1889.
 Q. When you left there how far was the road completed?
 A. From Gadsden to Littleton.
 Q. State how far Littleton is from the foot of Sand Mountain.
 A. Right at the foot.
 Q. Do you know anything about the heavy cut just beyond Littleton?
 A. Yes, sir.
 Q. How deep is that cut?
 A. I think it is about 70 or 80 feet.
 Q. What is the character of the excavation?
 A. It is solid rock; the first cut in the mountain. I know that Major Carlisle did the work up to the time O'Hearn took charge.
 Q. Who was O'Hearn connected with?
 A. I do not know who he was; he was a contractor.
 Q. Have you ever been over the road beyond Littleton?
 A. Yes, sir.
 Q. What traces of work did you find there, between Littleton and Guntersville, when you left there?
 A. There was a good deal of work unfinished. I could not tell how long the work had been done; it had been done some time. I found traces of work there of the retaining wall to keep the banks from washing.
 Q. What about any bridges along that line of road?
 A. Major Carlisle built them all up the mountain. I think that road crosses the creek 17 or 19 times, and he had built pretty much all the bridges up the mountain.
 Q. Do you know anything about this paper here?
 (Witness is here shown a paper, which is marked Exhibit C, for identification, and introduced as evidence.)
 A. Major Carlisle received it and showed it to me, and in accordance with same I took that account over to Guntersville.
 Q. Do you remember what directors were present at that time?
 211 A. Mr. Rayburn, Mr. Miller, Mr. Siebold and Judge Wyeth were there, and others—I do not remember the names.
 Q. Were you the bookkeeper at the time of the purchase of these lands?
 A. Up to the time of the purchase of the 23,000 acres.
 Q. Who brought the lists over to Major Carlisle?
 A. Mr. Rayburn and another gentleman with him; I think it was Mr. Siebold.
 Q. Were you cognizant of the price Major Carlisle was to pay for these lands?

A. He was to pay \$2.50 per acre.

Q. How was that to be paid?

A. Major Carlisle was to take it in part payment for the work that he did on the road.

Q. Do you know anything about who made the proposition to take the land—how it occurred?

A. The company, I think; as they did not have the money to pay for them, they agreed to let him have some land.

Q. Do you know Rayburn's handwriting?

A. I think I can identify it.

Q. Is that Rayburn's handwriting?

(Witness is here shown a book, which is marked Exhibit D, for identification, and asked to be introduced as evidence on behalf of defendants.)

A. Yes, sir; that is his handwriting.

Q. Can you state in round numbers what was due on that settlement to Major Carlisle from the railroad company?

A. About fifty-two thousand dollars, after the land was paid for.

Q. Was there any arrangement between Carlisle and the railroad company that these lands were to be held in trust that you know of.

A. Not that I know anything about.

(The above question and answer is objected to by counsel for plaintiffs on the ground of the question being leading.)

(At this stage, counsel on both sides agree to allow any objections to be made for immateriality, irrelevancy, or incompetency on the trial of the case.)

212

Cross-examination by Mr. WHITE:

Q. Did you have any connection with the Tennessee River & Coosa Railroad prior to 1885?

A. No, sir.

Q. Where did you reside before that time?

A. I was in Mississippi, and part of the time in Louisiana.

Q. What time in 1885 did you go there?

A. In August. I knew that Major Carlisle had been at work on the road before then. I had never been there before. I do not know, of my personal knowledge, that Mr. Carlisle had been at work there before that time.

Q. What position did you hold?

A. I was bookkeeper for Hugh Carlisle; employed by him for the company.

Q. I see here, in book marked Exhibit B, that you started with a debit against the railroad company of \$32,326.76. Where did you get that item from?

A. From Mr. Carlisle. Of my own knowledge I do not know any thing of the correctness of it.

Q. You have also credited him with \$15,452.19 and with interest on that item. For what length of time and what rate of interest did you calculate? Did you make the calculation yourself?

A. I made the calculation myself at 8 per cent. I do not recollect for what time.

Q. You say that Exhibit B is a book of original entry?

A. Yes, sir.

Q. I see here on pages 199, 201, 203, and 205, that all the items there have interest charged. What time did you calculate on these items?

A. From the date of the certificates I had on hand at that time. The accounts were given me by Major Carlisle. They came out of an old caisson. They were not transactions that occurred under my personal observation.

Q. These items on pages 199, 201, 203, all purporting to be transactions made prior to that time, until you get to January, 1885, and
213 down to the item of \$800 paid for tools, etc. Now do you mean to say that these items are simply recorded transactions which he gave you?

A. Yes, sir; transactions of which I knew nothing of personally.

Q. Did you write these accounts all out at one time, from page 199 to page 213, or did you write out each transaction as it occurred?

A. After the time I went there I wrote them out as they occurred. I took hold of the books in August, 1885.

Q. The first entry that you made on the books is made in December 31, 1885?

A. Yes, sir.

Q. So you did not make any entries prior to that time?

A. No, sir.

Q. Of the items prior to that date, they were given you by Major Carlisle?

A. Yes, sir.

Q. Do you know anything, of your own knowledge, of the correctness of the first item in your account?

A. No, sir.

Q. Just look at this book, marked Exhibit B, and state from what item on the book you commenced to make the entries as the transactions occurred.

A. To the best of my recollection, I commenced on August 5, 1885, on page 205, and the first item was: "Cash paid to R. F. Newton, board for self, \$21."

Q. Can you explain how it is that you made that item, on August 5, as an original entry on the book, when the account before that time, on page 199, seems to run regularly along up to that time?

A. After getting those vouchers and bills that Carlisle gave me, I commenced then and went straight on with it. I made that entry on August 25. That was the first voucher that Major Carlisle gave me.

Q. How did you make this item, which bears date December 31, 1885, precede this?

A. The vouchers that were given me, I wrote them up to that
214 time, and that was the first one I had any recollection after I commenced to work there. The item of December, 1885, was made before the item of August, 1885.

Q. When was that item, dated December 31, 1885, really entered?

A. On the day that I have it written.

Q. I find, on page 205, and before December 31, 1885, "Amount of sundry bills, as shown by invoice book, \$2,759.11." Where did you get those items from?

A. They were from bills and expenses from the invoice book.

Q. Where is that invoice book.

A. I could not tell you, sir. I have no recollection what that item was for. It was from the invoice book used while I was there. I left it there with the other books.

Q. Is it not a fact, Mr. Johnson, that all the items on page 205 were entered, just like the items on pages 199, 201, and 203, from the memoranda of statements made by you from Major Carlisle?

A. No, sir; I had bills for some of them.

Q. Is this for construction account or for operating account of the road?

A. Construction and operation.

Q. What did Rayburn do?

A. He was secretary.

Q. What did Wyeth do?

A. He was president of the company. I do not know who smoked the cigars.

Q. If these items were entered at the time they occurred, why should you make this entry on August 5, for cigar and other items, amounting to \$29.20, and charge interest on the same to date, 93 cents?

A. I charged them from the date of the bill up to the time the date shows there. I do not know what the date of the bill was.

Q. How long after these bills were paid before you entered them?

A. In 1885 I entered them as they came in, on every day. I
215 do not know how long Mr. Carlisle kept them before he gave the correctness of the bills, except what he told me. I paid some of the money.

Q. Point out any items that you paid yourself.

A. I paid out a lot for the hands. The most that I paid out was for pay roll for the hands. One item on page 209, dated December 31, 1886, amounting to \$6,654.36, cash paid employes on extension of the Tennessee & Coosa Railroad, was one of the items that I paid out. That is about the only one that I can call to mind now that I paid myself.

Q. Was that for construction?

A. Yes, sir.

Q. What part of the road was that for?

A. From Attalla to Littleton.

Q. Was that paid in money?

A. Yes, sir.

Q. Where did you get the money from?

A. From Major Carlisle.

Q. Where did he get it?

A. I do not know where he got it. He brought it to me in cash. He brought it from Gadsden, I guess.

Q. Did he live at Attalla?

A. Yes, sir; he boarded there. I made a requisition for it, and he brought it to me in cash, and I paid it out in cash.

Q. Do you have any positive recollection about making the requisition for the money?

A. We had certain days to pay on, and I told him when I wanted it. I have no positive recollection about it. I never tried to keep it in my mind.

Q. Was that money paid to a contractor or to the men on the road?

A. It was paid to the men on the road. Major Carlisle was the contractor himself. The road was completed to Littleton about 1886 or 1887. I seen the work going along the line. It was going over the old work. The old embankments were there and the cuts were there. They were cleaning and surfacing up the road.

Q. Did Mr. Carlisle have a sub-contractor under him?

216 A. He let some bridge work to Upton. Some of this money *me instructions to enter them. I do not know anything about that I* speak of I think was paid to Upton. I am not positive about that. I do not know whether I had an account against Upton or not. I can not approximate the account of Upton's work.

Q. Did you keep all the transactions of the construction and operation in this book marked Exhibit B?

A. Yes, sir; with the exception of Upton. I do not know where I kept Upton's account, unless it is in that book, Exhibit B.

Q. Did you keep any other book than this one marked Exhibit B in the construction and operation of that road?

A. No, sir.

Q. Have you any account of any book showing the cost of constructing that road from Attalla to Littleton?

A. Only that.

Q. Did Mr. Carlisle do all that work himself as a contractor?

A. Yes, sir; except the bridge work.

Q. Then the items charged in this account to the Tennessee & Coosa Railroad Company show the entire cost of constructing that road from Attalla to Littleton?

A. Yes, sir.

Q. You don't know anything about the construction of the road from Gadsden to Littleton?

A. No, sir.

Q. How far beyond Littleton did he construct the road?

A. There was only one cut that he worked on.

Q. I see in this account that Major Carlisle is charged with the gross earnings of the Tennessee & Coosa Railroad. Do you know what the earnings of the road were, except what you were told by Major Carlisle?

A. No, sir. Vouchers were furnished by Major Carlisle.

Q. Who took your place when you quit?

A. The road went into the hands of a receiver.

Q. You say there was some work done by Maj. Carlisle beyond Littleton?

217 A. Nothing but bridge work during the time I was there. There was some right of way cut beyond Littleton. There was no road completed beyond Littleton. I left the road in 1889. My last transaction was in 1887. The road had not been extended any from the time I quit until I left there.

Q. How far is it from Littleton to Gadsden?

A. It is called six miles from Gadsden to Attalla, and six miles from Attalla to Littleton. It is about twelve miles from Gadsden to Littleton.

Q. Then there was none of that road completed from Littleton to Attalla in 1889?

A. Yes, sir; I think it was in June, 1889.

Q. You say you went to a director's meeting over there; was that at Guntersville?

A. Yes, sir.

Q. Do you know the date of that?

A. The original envelope would show that. It shows April 2, 1888.

Q. That was after the road went into the hands of a receiver?

A. I do not think it was. I did not intend to say that it went into the hands of a receiver at the time I lost my job.

Q. Do not your books show that your last entries were made on December 31, 1887?

A. Yes, sir.

Q. Did you not lose your connection with the road at that time?

A. I was in the employ of Major Carlisle when this paper was taken over there.

Q. What were you doing from December 31, 1887, to the 2d of April, 1888?

A. I was living out there at the foot of the mountain. I had charge of Mr. Carlisle's effects after O'Hearn took charge.

Q. You referred to an envelope handed you by Mr. Goodhue to get the date of the meeting of the board of directors. Did you obtain the answer from the memorandum on the envelope?

A. Yes, sir; it is my handwriting.

Q. Do you know who were present as directors, except those you mention this morning?

218 A. No, sir; they met in the court-house, I think. Judge Wyeth acted as president. Mr. Carlisle was one of the directors. Major Carlisle is Judge Wyeth's son-in-law. I am not related to Major Carlisle. I went to Major Carlisle from Mississippi. I was in his employ out there. I had been working for him before that. I think I went to Mississippi in 1881 or 1882. I was a bookkeeper. Mr. Carlisle was doing levee work. He was at Delta, on the Louisiana side. He was at Delta in 1881 or 1882. He left Hard Times Landing, La., to go there.

Q. I see this paper marked Exhibit C is signed by W. W. Curry. Do you know where Mr. Curry is?

A. No, sir; I did not know him.

Q. You went to that meeting above referred to on the invitation extended by this note, marked Exhibit C?

A. Yes, sir.

Q. How long was that board of directors in session?

A. Well, pretty much all the morning, I think. They did not do anything but go over Major Carlisle's account. That is all that I know they done.

Q. You say that they checked up his accounts. What checks did you have reference to in Exhibit A?

A. Those little pencil marks on the items to the right.

Q. Was Major Carlisle a director in the company during all the time you were acting as bookkeeper for him?

A. Yes, sir. He was also general manager of the road.

Q. Do you know how far it is from Guntersville to Littleton, by way of railroad?

A. Yes, sir; 25½ miles.

Q. You say there were some traces of work having been done on that line towards Guntersville?

A. Yes, sir; that was old work, done a good many years ago. There were some large trees on it. I could not tell how long it had been since that work had been done.

Q. Did Major Carlisle go with you to Guntersville when you went to the meeting?

A. No, sir.

Q. You speak about his purchase of the 23,000 acres of land. When was that?

219 A. I can not give the exact date. It was in the winter of 1886 or 1887.

Q. You say he was to pay \$2.50 an acre for the land, and he took it as part payment on his account. Where does that appear as a credit on his books?

A. On page 208, dated December 1, 1886; \$59,871.42 the account is credited.

Q. You speak about the company agreeing to let him have some land. How did you know what the company did?

A. I heard the conversation between Mr. Rayburn and Mr. Carlisle. That is all I know about it. I do not know whether the board of directors authorized it or not of my own knowledge.

Q. You were handed a book this morning which is marked Exhibit D, and was asked in whose handwriting it was, and you stated that it was in Mr. Rayburn's handwriting; do you know Mr. Rayburn's handwriting?

A. Yes, sir; I have seen him write. I had references to pages of July 10, 1861, to August 10, 1861. Some of that book is in Mr. Rayburn's handwriting and some not. I do not know of my own knowledge whether Mr. Rayburn had any connection with the Tennessee & Coosa Railroad in 1858, 1859, 1860, and 1861, only from his handwriting in 1861.

Q. You speak of seeing along the line of the railroad between Littleton and Guntersville some retaining walls. You mean that was old work done years before?

A. Yes, sir.

Redirect examination by Mr. GOODHUE:

Q. You speak of this item of \$32,326.76, appearing on the book as per statement of S. K. Rayburn; where did you get that item from?

A. I got it from the statement that Mr. Rayburn brought over to Major Carlisle. Mr. Rayburn was secretary of the company at the time.

Q. You speak of being bookkeeper for Major Carlisle, also bookkeeper for the Tennessee & Coosa Railroad Company; were these books Carlisle's or the railroad company's?

A. The railroad company.

220 Q. Carlisle was the contractor for the railroad company. He was also general manager of the railroad.

A. I meant that I was employed by him for the railroad company.

Q. You speak of having been left in charge of Major Carlisle's tools and effects. Do you mean Carlisle's or the railroad company's tools?

A. They were the railroad company's tools.

Q. When did you make the memorandum on the envelope that you have been asked about?

A. April 2, 1888, on the day it bears date.

Q. What do you mean by checking and passing the items of the account by the directors?

(Objected to by counsel for plaintiffs on the ground of not being in rebuttal, same not having been brought out in direct examination.)

A. The secretary read each item and they were approved as they were read.

(Signed)

MARK JOHNSON.

The session of the examiner adjourned to meet February 13, 1894.

(Signed)

N. W. TRIMBLE, *Examiner*.

JANUARY 23, 1894.

EXHIBIT A TO TESTIMONY OF MARK JOHNSON.

GADSDEN, ALA., *January 1, 1886.*

Tennessee & Coosa Railroad Co. to Hugh Carlisle, Dr.

| | | |
|-----------|--|-------------|
| 1885. | | |
| Dec. 31. | To amount due January 10, 1880, as per statement of S. K. Rayburn..... | \$32,326.76 |
| | Interest on same to date, at 8 per cent, 5 years 11 months and 21 days..... | 15,452.19 |
| 1880. | | |
| May 29. | Cash paid Rice & Wyler, on account of Tennessee & Coosa Railroad..... | 250.00 |
| | Interest on same to date..... | 111.77 |
| 221 1881. | | |
| Feb. 21. | Cash paid Lester P. Smith, taking depositions of Jos. R. Abrams, Tennessee & Coosa Railroad Company..... | 5.00 |
| | Interest on same to date..... | 1.94 |
| April 1. | Cash paid W. J. Sibert, Gadsden, board self, Rice, Wyeth, and Rayburn..... | 20.00 |
| | Interest on same to date..... | 7.59 |
| Dec. 22. | Cash paid W. H. Clayton for certified copies of lands donated to the Tennessee & Coosa Railroad Company..... | 15.00 |
| | Interest on same to date..... | 5.10 |
| 1882. | | |
| Jan. 4. | Cash paid T. A. Street and Sol Palmer, commissioners, for taking depositions of Gilbreath, Louis Wyeth, W. Seabold, Henry L. Miller, Hugh Carlisle, and S. K. Rayburn, in case of East Alabama Railway Company vs. Tennessee & Coosa Railroad Company..... | 30.00 |
| | Interest on same to date..... | 9.58 |
| Jan. 6. | Cash paid Judge Street for papers of Tennessee & Coosa Railroad Company..... | 20.60 |
| | Interest on same to date..... | 6.37 |
| Jan. 21. | Cash paid to settle land matters..... | 98.00 |
| | Interest on same to date..... | 30.88 |
| Feb. 2. | Cash paid W. J. Sibert, board of Boyd, Rice, Rayburn, Alread, Hugh Carlisle, and incidentals..... | 31.00 |
| Feb. 2. | Interest on same to date..... | 9.70 |
| June 20. | Cash paid R. K. Boyd to go to Washington in interest of Tennessee & Coosa Railroad Company..... | 300.00 |
| | Interest on same to date..... | 84.66 |

THE O. C. V. TENNESSEE AND COOSA R. R. CO., ETC.

| | | |
|-----------|---|----------|
| 1883. | | |
| Sept. 2. | Cash paid P. J. Smith, board of Major Anderson, Judge Wyeth, Rayburn, and cash to Christopher | \$36.10 |
| | Interest on same to date | 6.73 |
| 222 | Cash paid fare of S. K. Rayburn to Guntersville | 7.50 |
| | Cash paid fare S. K. Rayburn and Wyeth from Guntersville to Gadsden | 12.50 |
| | Judge Rice's board in Gadsden | 2.50 |
| | Judge Rice's expense to Montgomery | 50.00 |
| | W. H. Denson, expense to Montgomery | 50.00 |
| | W. H. Denson, fare to Birmingham | 1.70 |
| | Interest on same to date | 23.18 |
| Dec. 31. | Cash paid Gadsden News, posters | 3.00 |
| | Interest on same to date | .72 |
| 1884. | | |
| June 26. | Cash paid board Arlington House, Washington | 73.00 |
| | Interest on same to date | 8.52 |
| July 24. | Cash paid Denson & Desque on account of Tennessee & Coosa Railroad Company | 200.00 |
| | Interest on same to date | 25.77 |
| Sept. 11. | Cash paid Sam Orr, board in Gadsden | 3.50 |
| | Interest on same to date | .34 |
| Sept. 19. | Cash paid J. C. McLoughlin, board in Attalla | 1.75 |
| | Interest on same to date | .45 |
| Sept. 21. | Cash paid Sam Orr, board in Gadsden, self and Judge Rice. | 3.38 |
| | Interest on same to date | .34 |
| Dec. | Cash paid Denson & Desque on account of Tennessee & Coosa Railroad Company | 15.00 |
| Dec. | Interest on same to date | 1.20 |
| | Cash paid S. F. Rice on account of Tennessee & Coosa Railroad Company | 100.00 |
| | Interest on same to date | 8.46 |
| | Cash paid T. J. Watkins, clearing right of way Tennessee & Coosa Railroad Company | 693.07 |
| | Interest on same to date | 55.44 |
| | Cash paid David G. Lewis | 800.00 |
| | Interest on same to date, from 1873 | 832.00 |
| 223 | 1885 | |
| Jan. 5. | Cash paid Denson & Desque on account of Tennessee & Coosa Railroad | 10.00 |
| | Interest on same to date | 3.13 |
| Jan. 22. | Cash paid S. Orr, board in Gadsden | 7.50 |
| | Interest on same to date | .56 |
| Jan. 26. | Cash paid J. C. McLoughlin, board in Attalla | 6.75 |
| | Interest on same to date | .50 |
| Feb. 1. | Cash paid Merchants' Hotel, board | 11.65 |
| | Interest on same to date | .85 |
| June 1. | Cash paid Woodliff, horse and buggy hire | 1.50 |
| | Interest on same to date | .07 |
| June 18. | Cash paid R. E. Thomas and E. S. Rolls, measuring track | 3.00 |
| | Interest on same to date | .12 |
| July 1. | Cash paid, board of self and Rice, to R. F. Newton | 4.50 |
| | Interest on same to date | .24 |
| July 2. | Cash paid W. H. Denson on account of Tennessee & Coosa Railroad | 2,500.00 |
| | Interest on same to date | 98.85 |
| July 5. | Cash paid W. H. Denson, getting up map of Tennessee & Coosa Railroad Company | 11.10 |
| July 5. | Interest on same to date | 43.00 |
| July 6. | Cash paid R. F. Newton, board | 9.00 |
| | Interest on same to date | .35 |
| July 10. | Cash paid L. Harrison for certified copy of map of definite location of T. & C. R. R | 11.00 |
| | Interest on same to date | .41 |
| July 16. | Cash paid J. T. Nixon, board, Birmingham | 1.25 |
| | Interest on same to date | .04 |
| July 22. | Cash paid J. C. Anderson, as witness | 31.00 |
| | Interest on same to date | 1.09 |
| Aug. 5. | Cash paid R. F. Newton, board of self, Rayburn, Wyeth, telegram, Obal Christopher | 28.10 |
| | Interest on same to date | .90 |

| | | |
|-------|---|-------------|
| 1885. | | |
| 224 | Aug. 7. Cash paid Campbell | \$5. 40 |
| | Interest on same to date | . 17 |
| | Aug. 15. Cash paid board of self in Washington | 6. 25 |
| | Interest on same to date | . 18 |
| | Aug. 20. Cash paid W. H. Denson on account of Tennessee & Coosa Railroad | 1, 000. 00 |
| | Interest on same to date | 29. 06 |
| | Aug. 31. Cash paid John H. Morgan, fee before the land office, Washington | 100. 00 |
| | Interest on same to date | 2. 66 |
| | Sept. 3. Cash paid A. E. Lewis, for tools, etc. | 22. 85 |
| | Interest on same to date | . 59 |
| | Sept. 30. Cash paid S. F. Rice on account of Tennessee & Coosa Railroad .. | 200. 00 |
| | Interest on same to date | 4. 13 |
| | Cash paid John T. Morgan printing appeal before Secretary of Interior | 17. 00 |
| | Interest on same to date | . 34 |
| | Nov. 24. Cash paid S. F. Rice on account of Tennessee & Coosa Railroad .. | 500. 00 |
| | Interest on same to date | 4. 11 |
| | Dec. 31. Cash paid State, county, and city taxes for 1885 | 536. 49 |
| | Cash paid sundry bills | 251. 00 |
| | Tools, picks, shovels, scrapers, etc. | 800. 00 |
| | Amount of sundry bills as shown in invoice book | 2, 759. 11 |
| | Freight bills on railroad material | 420. 29 |
| | Amount paid employees wages on the Gadsden branch of the Tennessee & Coosa Railroad | 1, 879. 73 |
| | Amount paid employees wages on the extension of the Tennessee & Coosa Railroad | 4, 181. 32 |
| | Amount paid for cross ties and bridge timbers | 1, 738. 10 |
| | 20 per cent added on \$12,566.04 | 2, 513. 20 |
| | | <hr/> |
| | | 71, 580. 56 |

225 Cr.

| | | |
|-------|--|--------------|
| 1885. | | |
| | Dec. 31. By gross earnings of the Tennessee & Coosa Railroad from July 24, to December 31, 1885, inclusive | \$5, 701. 20 |
| | Cash received from S. K. Rayburn for sale of Tennessee & Coosa Railroad Company's land | 140. 00 |
| | Balance due Hugh Carlisle, carried to 1886 | 65, 739. 36 |
| | | <hr/> |
| | | 71, 580. 56 |

GADSDEN, ALA., January 1, 1887.

Tennessee & Coosa Railroad Co. to Hugh Carlisle, Jr.

| | | |
|-------|---|---------------|
| 1886. | | |
| | Jan. 1. To balance due from 1885 | \$65, 739. 36 |
| | Jan. 10. Cash paid secretary of state for certified lists of overlapping lands, and copy of title deed made by the State of Alabama. | 3. 50 |
| | Cash paid board and expenses to Montgomery, looking after taxes of the Tennessee & Coosa Railroad Company | 19. 00 |
| | June 26. Cash paid expenses to Anniston | 10. 00 |
| | July 6. Cash paid expenses to Cincinnati | 14. 00 |
| | Aug. 25. Cash paid Rhode Island Locomotive Works for engine, Thos. M. Edwards | 1, 200. 00 |
| | Oct. 19. Cash paid Woodward Wight Co., New Orleans, for 25 car loads of rails, fastenings, spikes, claw bar, and one hand car | 10, 248. 92 |
| | Cash paid board in New Orleans | 22. 35 |
| | Dec. 31. Cash paid J. H. Desque on account of Tennessee & Coosa Railroad | 25. 00 |
| | Cash paid expenses to Chattanooga | 25. 00 |
| | Cash paid R. B. Rhea for old pipe for water tank on extension Tennessee & Coosa Railroad | 26. 30 |
| | Cash paid Hamner & Son, overcharge on cotton shipped to Gadsden | 7. 55 |
| 226 | Cash paid H. C. Davidson, January 21, 1882, for Judge S. F. Rice | 72. 50 |
| | Interest on same to date | 28. 67 |
| | Cash paid sundry bills for 1886 | 7, 913. 41 |
| | Cash paid freight bills on railroad material | 1, 020. 80 |

| | | |
|----------|--|------------|
| 1886. | | |
| Dec. 31. | Cash paid State, county, and city taxes for 1886 | \$562.41 |
| | Cash paid for cross-ties and trestle timbers | 839.15 |
| | Cash paid employes wages on the Gadsden branch of the Tennessee & Coosa Railroad | 4,757.86 |
| Dec. 31. | Cash paid employes wages on the extension of the Tennessee & Coosa Railroad | 6,654.36 |
| | 20 per cent added on \$33,223.21 | 6,644.64 |
| | Interest on balance due, \$65,739.36, at 8 per cent for one year | 5,259.14 |
| | | 111,093.92 |

CR.

| | | |
|----------|--|------------|
| 1886. | | |
| Dec. 31. | By gross earnings of the Tennessee & Coosa Railroad for 1886 | 15,024.98 |
| | Cash received from S. K. Rayburn for sale of lands of Tennessee & Coosa Railroad Company | 170.00 |
| | Note given to Samuel Noble | 10,248.92 |
| Dec. 23. | 739 51-100 acres of land bought from the Tennessee & Coosa Railroad Company at \$2.50 per acre | 59,348.75 |
| | Balance due Hugh Carlisle, carried to 1887 | 26,301.27 |
| | | 111,093.92 |

GADSDEN, ALA, Jan. 1, 1888.

Tennessee and Coosa Railroad Co. to Hugh Carlisle, Dr.

| | | |
|-----------|--|-------------|
| 1887. | | |
| Jan. 1. | To balance due from 1886 | \$26,301.27 |
| Feb. 5. | Cash paid Judge Rice on account of Tennessee & Coosa Railroad Company | 100.00 |
| May 14. | Cash paid man looking after lands of the Tennessee & Coosa Railroad Company | 18.00 |
| 227 | Cash paid fare of D. J. Dufley from Chattanooga to Birmingham | 11.70 |
| June 6. | Cash paid expenses to Chattanooga looking after rails | 10.00 |
| | Cash paid W. H. Denson | 250.00 |
| June 9. | Cash paid Woodliff, carriage hire for Quintard and others to Guntersville | 10.00 |
| June 13. | Cash paid expenses to Guntersville, Montgomery, and Mobile to appoint an agent to select lands and have memorial signed .. | 27.00 |
| | Cash to Washington to employ counsel | 80.00 |
| | Cash to Centre | 8.00 |
| | Cash to Montgomery to see Brickell in Brice suit | 13.00 |
| | Cash to Montgomery on railroad-land business | 17.00 |
| Sept. 14. | Cash cost in Shields land case | 38.35 |
| Nov. 10. | Cash paid Merriweather excess telegraphing | 20.05 |
| Nov. 21. | Cash paid Merriweather excess telegraphing | 14.08 |
| | Cash paid John T. Morgan | 450.00 |
| | Cash paid M. A. Ayers, C. E. | 20.00 |
| | Cash paid land-office fees in Huntsville | 25.00 |
| | Cash paid E. W. and S. W. Cox for trestle timbers | 865.89 |
| Dec. 8. | Cash paid S. F. Rice on account of Tennessee & Coosa Railroad .. | 100.00 |
| Dec. 31. | Cash paid State, county, and city taxes for 1887 | 1,118.53 |
| Dec. 31. | Cash paid sundry bills for 1887 | 16,446.60 |
| | Cash paid freight bills on railroad material | 615.39 |
| | Cash paid for teams | 915.25 |
| | Cash paid for cross-ties and bridge timbers | 807.96 |
| | Cash paid employes wages on Gadsden branch of the Tennessee & Coosa Railroad Company | 7,302.41 |
| | Cash paid employes wages on extension of the Tennessee & Coosa Railroad Company | 6,252.24 |
| | Cash to Samuel Noble | 2,500.00 |
| | Cash to S. K. Rayburn, expenses to Huntsville, May 27, 1887 | 20.00 |
| 228 | Interest on same to date, seven months | .91 |
| | 20 per cent added on \$31,324.27 | 6,864.85 |
| | Interest on balance due, \$26,301.27, at 8 per cent, for one year .. | 2,104.10 |

73,327.58

CR.

| | | |
|----------|--|-----------------------|
| 1887. | | |
| Dec. 31. | By gross earnings of the Tennessee & Coosa Railroad for 1887 | \$15,815.47 |
| | Old rails sold South Tredegar Iron Company | 219.28 |
| | Old rails sold | 275.19 |
| | Amount of overcharge and damage claims collected for years 1886 and 1887 | 1,508.41 |
| | Cash received for sale of right of way | 2,500.00 |
| | Cash received for sale of lot in Attalla to F. M. Little | 350.00 |
| | Cash received from Asa Ray for sale of land | 40.00 |
| | Balance due Hugh Carlisle, carried to 1888 | 52,619.23 |
| | | <hr/> 73,327.58 <hr/> |
| 1888. | | |
| | To balance brought forward | 52,619.23 |
| | By 17,410 acres land, at \$1.25, quitclaim | 21,762.50 |
| | | <hr/> 30,856.73 <hr/> |
| | Interest on land from the purchase, April 2, 1887, to date of settlement, April 2, 1888, being one year, at 8 per cent | 1,741.00 |
| | | <hr/> 29,115.73 <hr/> |
| April 2. | Balance due | |

EXHIBIT C TO TESTIMONY OF MARK JOHNSON.

GUNTERSVILLE, ALA., *January 26, 1888.*

HUGH CARLISLE, Esq.:

DEAR SIR: It would be proper and right for you, at the next meeting of our board, to be held on the 1st of next month, to come prepared to make a full settlement of your accounts with the Tennessee & Coosa Railroad Company.

I hope that you will be ready to make such settlement.

Give my love to Mary, and, sincerely, your friend,

LOUIS WYETH,
Per W. W. CURRY.

230 *Testimony of Hugh Carlisle.*

In the circuit court of the United States for the northern district of Alabama.

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| UNITED STATES | } | No. 40. In equity. |
| vs. | | |
| TENNESSEE AND COOSA RAILROAD COMPANY | | |
| et als. | | |

BIRMINGHAM, ALA., *February 12, 1894.*

By consent, the session of the examiner was adjourned until February 16, 1894.

BIRMINGHAM, ALA., *February 16, 1894.*

The session of the examiner was convened on the above-named date, pursuant to adjournment. Present: N. W. Trimble, examiner; Amos E. Goodhue, attorney for Hugh Carlisle; Frank S. White and James E. Hawkins, attorneys for the Government.

HUGH CARLISLE, being duly sworn, says as follows:

By Mr. GOODHUE:

Q. Are you a party defendant to this suit?

A. Yes, sir.

Q. Do you know the deeds which are made exhibits to the original bill?

A. Yes, sir.

Q. Are you the grantee named in these deeds?

A. Yes, sir.

Q. What was the consideration for the execution of these deeds, copies of which are made exhibits to the original bill?

A. The consideration was \$2.50 an acre.

Q. State how fully and particularly all the facts pertaining to the purchase of these lands from the Tennessee and Coosa Railroad Company.

A. The company owed me largely for building of the road and they proposed to give me lands for a part of what they owed me, and I
231 said that I would take a part of it in lands if I were satisfied that they could give me a good title. They then concluded to get an opinion from Judge Brickell, if I would purchase the lands. Mr. Rayburn, the secretary, and Judge Wyeth, one of the directors, went to Huntsville to see Judge Brickell, and they told me that Mr. Brickell said that they could make a good title, and they wished to sell me a part of the lands. I then told Mr. Rayburn to pick out twenty thousand or thirty thousand acres for me. Mr. Rayburn selected them, and told me that they would give me a deed to them in twenty days, and charge my account with the amount, which they did.

Q. State what collusion, secret trust, or reservation, if any, there was between you and the railroad company in the conveyance of these lands to you.

A. None whatever.

Q. State what amount of taxes, if any, were paid, and state whether such taxes were paid out of your own funds.

A. I paid five or six thousand dollars out of my own funds for taxes.

Q. Give a history of your connection with the railroad company; when were you first connected with it?

A. The railroad company advertised for contractors to build the road; I was one of eighteen that appeared to bid on it in July, 1859; I made a proposition to build a part of the road.

(Witness here introduces a paper marked Exhibit A to Hugh Carlisle's testimony, which is the proposition spoken of and signed by himself, and is asked to be taken as a part of his testimony.)

Q. Look at this paper and state what it is.

(Witness is handed a paper marked Exhibit B to Hugh Carlisle's testimony, for identification, and asked to be taken as a part of his testimony.)

A. It is one of my contracts for building portion of the road.

Q. Whose handwriting is that in this book?

(Witness is here handed a book marked Exhibit C to Hugh
232 Carlisle's testimony, for identification, and asked to be taken as part of his testimony.)

A. That is the handwriting of George H. Arms, the chief engineer. He is dead now. That was the estimate book kept by him.

Q. Was the work performed as shown by these estimates?

A. Yes, sir.

Q. What is this book here?

(Witness is here shown book marked Exhibit D to Hugh Carlisle's testimony, for identification, and asked to be taken as a part of his testimony.)

A. That is the time book kept by Robert McLenon. I think I had a half dozen books like this.

Q. Did you have a settlement with the Tennessee & Coosa Railroad Company about the time you bought these lands from the railroad company?

A. Yes, sir; I had a settlement after I bought the lands.

Q. When was it?

A. On April 2, 1888.

Q. At that time how much did they owe you for work done before the war?

A. About forty thousand dollars.

Q. How much did they owe you in all, not deducting the lands?

A. About one hundred and eleven thousand dollars. The books will show the exact amount. The account which is an exhibit to Mark Johnson's testimony is correct.

Q. What money did the Tennessee & Coosa Railroad Company have, if any?

A. Not a cent.

Q. Who supplied the money for the construction of the road after the war?

A. I supplied it all.

Q. How much of the road was completed before the war?

A. There was a great deal of work done before the war; a good
233 deal of it was heavy work. In one section I spent one hundred and ten thousand dollars for one mile of grading. Partial payments were made on that and the balance is due on it yet.

Q. When was work resumed on this railroad after the war?

A. It was resumed in 1870. There was a little work done between Gadsden and the foot of the mountain. In 1885 it was resumed again. I paid for the work that was done from 1885 to 1888.

Q. What book is this?

(Witness is here shown book marked Exhibit E to Hugh Carlisle's testimony, for identification, and asked to be taken as a part of his testimony.)

A. It is a time book. The hands done the work as shown there. It was kept in the regular course of business.

Q. From page 115 to 154 of this invoice book, what are those papers in here?

(Witness is here shown pages 115 to 154, inclusive, of an invoice book, which is marked Exhibit F to Hugh Carlisle's testimony, for identification, and made a part of his testimony.)

A. They are vouchers for work done; some for purchases of iron and other articles. They were made for the Tennessee & Coosa Railroad Company. The bills were paid by me.

Q. What about these checks that appear here from pages 165 to 169 in this invoice book?

(Witness is here shown pages 165 to 169, inclusive, of invoice book, and which pages are marked Exhibit G to Hugh Carlisle's testimony, for identification, and made a part of his testimony.)

A. The checks were given for the Tennessee & Coosa Railroad Company. The money was used for building the road.

Q. State what you know about the execution of a mortgage on the lands in 1860, and the issuance of bonds.

A. They issued 400 bonds of \$1,000 each. The bonds were afterward canceled. Judge Wyeth placed \$11,000 to my credit in Jordan Manning Co.'s safe; he told me so.

234 Q. Do you know anything of the minute book of the railroad company?

A. Yes, sir; it is lost. I was in New York when I lost it. I was carrying it for the company, and I lost between Washington City and Parkersburg, on the Baltimore & Ohio Railroad. I had it strapped to my satchel. I have never been able to find it since that time. I offered a reward for it.

Q. Have you a copy of the proceedings of the board of directors of the Tennessee & Coosa Railroad Company, held on September 14, 1883?

A. Yes, sir; this is it.

(Witness here introduces a paper which is marked Exhibit H to Hugh Carlisle's testimony, for identification, and asked to be made a part of his testimony.)

Q. Were you present at the meeting?

A. Yes, sir; this is a correct record of what occurred at that meeting.

Q. State what you did under these resolutions in the construction of the road.

A. I built the road. I built it from Gadsden to the foot of Sand Mountain, and done a good deal of work going up the mountain; built a dozen or so bridges going up the mountain. The road was running from Gadsden to Littleton, about 10.29 miles, on and before the 29th day of September, 1890. It was completed and in operation at that time.

Q. What portion was completed and in operation on the 1st of January, 1890?

A. The same distance, just as it was in September.

Q. State what lands, if any, were embraced in your deeds from the Tennessee & Coosa Railroad Company, that are lying by the side of and coterminus with that portion of the Tennessee & Coosa Railroad which was completed and in operation on the 29th day of September, 1890?

(Objected to by counsel for the Government on the ground that the deeds themselves are the best evidence, together with the map of
235 the location of the road and of what lands are so situated, and because this is not the best evidence, but only secondary evidence, and the best evidence is not introduced.)

A. The lands embraced in the quitclaim deed are all beside and coterminus with that portion of the road which was completed and in operation in September, 1890.

Q. State what you know about the sales of lands by the railroad company to other parties than yourself.

(Objected to by counsel for the Government, because it is incompetent, irrelevant, and inadmissible, and because the deeds or written contracts conveying other lands conveyed by the railroad company are the best evidence, and because this evidence is secondary.)

A. The stubs on the books will show for themselves.

(Witness here introduces two books, which are marked Exhibits I and J to Hugh Carlisle's testimony, for identification, and made a part of his testimony.)

Q. Were these lands sold for cash, or on credit?

A. They were sold some for cash and some on credit. Certificates were given like appear in book. Notes were given for the balance of the purchase money. They all bought at \$2.50 an acre. I hold the notes now. I have the notes in my room at the hotel, and will introduce them as a part of my evidence. They are marked Exhibit K to Hugh Carlisle's testimony. I claim these notes for balance due me. They were given me as collateral.

Q. Have you a record of the sales that were made by the railroad company?

A. It was kept by the secretary, Mr. Rayburn, who is dead. I have it in my possession.

(Witness here introduces a paper, marked Exhibit L to Hugh Carlisle's testimony, for identification.)

Q. Can you tell what lands you have sold, to whom, and when?
236 (Objected to by counsel for the Government, because the deeds would be the best evidence of what he sold.)

A. Here is a correct list of the lands which I have sold.

(Witness here introduces a paper, which is marked Exhibit M to Hugh Carlisle's testimony, for identification.)

Q. Was anything paid to you by the purchasers for the purchase money on the land?

A. They paid me.

Q. What collusion or trust was there between you and the parties that bought from you?

A. None whatever.

Q. What is this book?

(Witness is here shown book marked Exhibit N to Hugh Carlisle's testimony, for identification, and made a part of his testimony.)

A. It is a time book of the Tennessee & Coosa Railroad Company, kept in the regular course of business. The men did the work as it is marked there, and I paid them for it.

Q. What lands, if any, did you purchase from S. K. Rayburn, S. M. Bains, Samuel D. McKinney, and W. E. and W. L. Knox?

(Objected to by counsel for the Government, because the deeds are there to speak for themselves.)

A. The original deeds are here.

(Witness here introduces several deeds, which are marked Exhibit O to Hugh Carlisle's testimony, for identification, and made a part of his testimony.)

Q. Did you pay for these lands?

A. Yes, sir; and my vendors also paid for these lands that they bought from the Tennessee & Coosa Railroad Company.

Q. For what purpose were the proceeds of the sales of the lands from the Tennessee & Coosa Railroad Company used?

A. For building the road, exclusively.

237 Q. What secret trust, or reservation, if any, was there in regard to the purchase of these lands?

A. None at all.

(Counsel for Hugh Carlisle here introduces a paper marked Exhibit P to Hugh Carlisle's testimony, for identification, and made a part of his testimony.)

Q. What paper is that, and in whose handwriting is it?

A. That is the original report, and is in the handwriting of Mr. Rayburn, who was the president of the Tennessee & Coosa Railroad Company.

Q. There is something said in that report about a man named Lewis; who paid the amount that was due the contractor Lewis, as is referred to in that report?

A. I did; it was about \$800. He got a judgment against the company some time after the war.

Cross-examination by Mr. WHITE:

Q. When did you first become a director of the Tennessee & Coosa Railroad Company?

A. Just before the war commenced, after I had taken the contract to build the road—about 1861; just before we stopped the road.

Q. When did you first become familiar with the finances of the road?

A. When I got to working out my contract in 1859.

Q. What debts did the road owe at the breaking out of the late war?

A. The road owed Mr. Lewis and myself. I bought Lewis's judgment to keep him from selling the road.

Q. How much did they owe you at that time?

A. The engineer's book, Exhibit C, will show that; I think about \$40,000.

Q. Did the company owe you all that the Exhibit C shows has been estimated to you?

A. Yes, sir.

238 Q. How long had you then been working for the company?

A. I commenced working for the company in 1859—about the middle of 1859. My proposition to the company will show that.

Q. Was the road indebted to the other contractors?

A. No, sir. They were all paid up.

Q. About how much did the road expend in construction and services up to the breaking out of the late war?

A. I would say about \$300,000.

Q. How much of that was construction?

A. All construction, and furnishing ties. We had all the ties gotten out for the entire road when the war came on. We had the cars and rails negotiated for. I had not bought or paid for any of the equipment of the road at that time, nor any of the rails. It was pretty well graded the entire length at the breaking out of the war. The cross-ties had been distributed along the road. I had quite a lot of timber placed along the road. That had all been paid for except what was owing to me and contractor Lewis.

Q. What assets or means did the road have at the breaking out of the war?

A. They did not have anything except these 400 bonds of \$1,000. The bonds that had never been negotiated. The bonds that the president reported at a meeting of the directors in Exhibit P.

Q. Where did the road obtain the means to pay for constructing or grading the road and placing the cross-ties used for trestle?

A. From the State of Alabama and from private subscription.

Q. How much did it have from the State of Alabama?

A. About \$250,000. It was a fund called the two and three per cent fund, which was five per cent of the net proceeds of the sales of lands donated to the State of Alabama by the United States Government for the purpose of connecting the waters of the Tennessee River with the Mobile Bay.

239 Q. How much did this railroad company receive from private subscription?

A. About \$50,000.

Q. Was the amount received from the State on the two and three per cent fund, of which you have just spoken, and the \$50,000 received as private subscription, the only assets of the railroad company at the breaking out of the war?

A. That was all.

Q. Did they ever receive any other funds after that?

A. No, sir.

Q. What was the capital stock of the Tennessee & Coosa Railroad Company?

A. Fifty thousand dollars, with the privilege of making it \$500,000. It was not paid in, that is, the \$500,000 was not paid in.

Q. Were you a director continuously from the time you first became one up to the time you brought these lands in controversy?

A. Yes, sir.

Q. You say that you had eleven of the bonds as collateral security—that would be eleven thousand dollars?

A. Yes, sir. They were delivered to Jordan Manning & Co. for me, after the war, by the president of the road, Judge Wyeth. The bonds were canceled after I bought the land. They were first set apart to me after the war.

Q. Who of the directors that were directors before the war are still living?

A. Mr. Henry Miller, Albert G. Henry, Wendell Seibold, George Beggs, of Macon, Ga.; George S. Henderson, of Tuscumbia. That is all that I can remember. Mr. Miller is at home in Marshall County, Alabama, near Guntersville. Mr. Henry is living at Guntersville; I am not sure whether he was a director or not. Mr. Seibold is in Marshall County, Ala. Mr. Wyeth is dead. Mr. Samuel K. Rayburn is dead.

Q. Who was the treasurer of the road?

A. James H. Moore; he is dead.

Q. Who was the secretary of the road before the war?

A. Mr. Rayburn; he was president and secretary too. Judge Wyeth was president for a little while.

240 Q. I see an estimate of Hollinsworth and Lewis; is that the same Lewis you had reference to before?

A. No, sir; that is another party. They are both dead.

Q. Do you know who Mr. S. S. Leake is?

A. No, sir; I do not remember him.

Q. Who is J. E. Glasner?

A. I do not know. Grooper Scott is dead. Chas. P. Fielder, I think, is dead. Thos. P. Fielder, I think, is dead. I do not know R. L. Berry. William Sedgwick and S. Jacobs are dead.

Q. I see you exhibit a good many of the books of the Tennessee & Coosa Railroad Company—when did you first come into possession of these, Mr. Carlisle?

A. Well, that book was used before the war, and my wife found it among some of the papers and effects of Judge Wyeth a few days ago. This book, Exhibit C, I have had since before the war. It was in the company's office. The company kept its office in Guntersville. Mr. Rayburn and Mr. Wyeth had charge of the papers before the war. Under the resolutions of the board of September, 1883, I got control of them; they were turned over to me. Judge Wyeth died about four years ago, and Mr. Rayburn about two years ago.

Q. Did the company make any settlement with you before the breaking out of the war?

A. No, they did not; they had no money to pay me.

Q. Did they make any settlement as to the amount agreed upon or indebtedness to you?

A. No.

Q. Were you present at the stockholders' meeting when the then president, in 1861, submitted his report, as shown by Exhibit P?

A. I do not remember whether I was or not.

Q. Where did you get that report?

A. Among the company's papers.

Q. When were the first rails laid, and the road first completed, on any part of this road?

A. In 1871, from Gadsden to Attalla, and has been in operation ever since.

241 Q. What kind of a train was run there?

A. A regular railroad train was run there.

Q. Was the railroad completed from Gadsden to Attalla in 1871?

A. Yes, sir. It was completed from Attalla to Littleton in 1887, and was put in operation to that point. The old road-bed was used that was made before the war. I paid the road \$2.50 an acre for the lands I bought from the road in settlement of my debt. They were wild lands, on the mountain. I paid State, county, and city taxes on the land. The city of Gadsden charged taxes, also the city of Attalla. I paid the taxes for the company and my own land. That is what I mean by paying \$5,000 for taxes. I furnished the company with all the means since the war. I had practical control of the road since the war. There was an interval of about twelve years when it was in litigation. All construction was done under my direction; the equipment also. What has been done on the road since the war was done under my management. The rails were laid by a firm named Boyle, Shepard, Wells & Carlisle on the part from Gadsden to Attalla.

Q. State whether or not the road was constructed and operated by you after the war, up to the time it got to Littleton.

A. Yes, sir. I had some litigation with some other railroad—the East Alabama & Cincinnati.

Q. How much did that road put in the construction and equipment of of this road?

A. Boyle, Shepard, Wells, and myself had the contract to build the whole road, from Eufaula to Guntersville.

Q. Was this road built from Littleton to Attalla under that contract?

A. No, sir. I furnished the rails and paid for them. We did a little work near Anniston on the line of the road, and between that and Opelika, and done some work between Attalla and Gadsden, and a little work going up the mountain beyond Littleton, and built a big trestle before we struck Littleton. The East Alabama & Cincinnati Railroad did not pay out any money for work. They delivered to us bonds to the amount of \$16,000 a mile on the five miles that we put a track on from Gadsden to Attalla. That is all we got from the East Alabama & Cincinnati. We did not get any bonds for building from Attalla to Littleton.

Q. When did you get these bonds for the building and equipment of the road from Gadsden to Attalla?

A. In 1871 or 1872.

Q. What was done with these bonds?

A. They borrowed money on them to get the rails from Gadsden to Attalla, and afterwards the East Alabama and Cincinnati went into bankruptcy, and they went with the other assets.

Q. Who were these bonds delivered to—those that you received from Gadsden to Attalla?

A. They were delivered to our company. I think Mr. Wells was the engineer. I think he got the bonds. I think he went up north and hypothecated them for the rails that we got.

Q. You say they were received by your company. What company do you mean?

A. Boyle, Shepard, Wells, and Carlisle.

Q. They were not received by the Tennessee and Coosa Railroad Company, then?

A. No, sir.

Q. In your account against the Tennessee & Coosa Railroad Company did you not charge them with equipping that road from Gadsden to Attalla?

A. No, sir. I charged them with what work I done on it after the Tennessee & Coosa got it back. I took hold in July, 1888. I improved the road very much.

Q. This road, then, from Gadsden to Attalla, was done by this contracting company, composed of Boyle, Shepard, Wells, and yourself, and you were building it for the East Alabama & Cincinnati Railroad?

A. Yes, sir.

Q. When did you commence that road?

A. Immediately after I got possession of it—July, 1885. I finished it in 1887.

Q. Who built that road out there?

A. I built it alone.

Q. For whom did you build that road?

243 A. For the Tennessee & Coosa Railroad, under the contract and resolutions made September, 1883.

Q. How far is it from Attalla to Littleton?

A. It is said to be six miles, but I do not think it is that far.

Q. Was that all of the road that the Tennessee & Coosa Railroad had completed when they made you a conveyance of these lands?

A. Yes, sir.

Q. Did not the State of Alabama turn over to that road some bonds?

A. They endorsed these bonds from Attalla to Gadsden for the East Alabama & Cincinnati, but did not for the Tennessee & Coosa Railroad.

Q. Did the directors of the Tennessee & Coosa Railroad have any meetings after the war, up to 1883?

A. Yes, sir; they held meetings every year at Guntersville. The minute book showing these meetings is lost. I lost the minute book on the 20th of August, 1888.

Q. What did you say you were doing with that book?

A. I was taking it, at the request of the company's lawyer, Hugh L. Cole, to have a resolution inserted at Guntersville. I got it from the company's lawyer in Wall street, New York.

Q. How long did the East Alabama & Cincinnati Railroad operate that road between Gadsden and Attalla?

A. About two or three years—in 1871 and 1872.

Q. How did this East Alabama & Cincinnati Railroad get that road from the Tennessee & Coosa Railroad?

A. Under a contract, or rather a deed or condition that they were to build and complete it. I do not know where that deed is.

Q. Did you ever see the deed?

A. Yes, sir.

Q. Have you made a search for it recently?

A. I did not know that it would be required. I have hunted among my papers and have not been able to find it.

Q. Did that deed convey to the East Alabama & Cincinnati Railroad all the right of the Tennessee & Coosa Railroad?

244 A. The deed was conditional; the East Alabama & Cincinnati Railroad agreed to pay the floating debt and give the stockholders of the Tennessee & Coosa Railroad stock, dollar for dollar, in the new organization, and the East Alabama & Cincinnati Railroad agreed to finish the road in two years; and if they failed within two years the road was to revert back to the Tennessee & Coosa Railroad Company. The floating debt was what they owed me for building the road before the war. At that time I think it was about \$50,000, principal and interest.

Q. Was that done by order of the board of directors of the Tennessee & Coosa Railroad Company?

A. Yes, sir. I think I participated as one of the directors. I think I agreed to it.

Q. Who was the president of the East Alabama & Cincinnati Railroad?

A. J. L. Pennington, of Opelika. I do not know whether he is there now or not. I do not know who was secretary and treasurer. I do not know any of the other officers.

Q. Does that book, Exhibit C, show all the work that was done by you prior to the war for the Tennessee & Coosa Railroad?

A. I do not know whether it does or not. I do not know whether that is all included in this or not. I think that was all the estimate book the company had before the war. The estimate of the contracts was kept in that book.

Q. You say you had a settlement on April 2, 1888, with the Tennessee & Coosa Railroad Company. With whom did you make that settlement?

A. The president of the Tennessee & Coosa Railroad. I did not make it myself; Mr. Johnson, the company's bookkeeper, made it. I sent over the account by the company's bookkeeper, Mr. Johnson, and the company acted on it. I was in Etowah County at the time, working the company's road.

Q. Did you take any steps at the close of the war to collect the \$40,000 due and owing you by the railroad company up to the time that the East Alabama & Cincinnati Railroad assumed it?

A. No; they revived it by resolution of the board. They
245 revived the debt from time to time. It is in the minute book that is lost. They also revived it in these resolutions of 1883. I tried to get my money all the time, but they did not have the money. I never took any transfer of the property but these bonds. They gave me a mortgage on everything they had in 1883. Nothing was done before that time to secure me in my debt but these bonds.

Q. Where is the mortgage of 1883 recorded?

A. It is not recorded at all. It is in the resolutions of 1883.

Q. Who was the secretary of the company at the close of the war?

A. Rufus K. Boyd. He is dead. After that Mr. Rayburn. After that I do not know of any person else.

Q. What directors are now living that were directors after the war?

A. Mr. George Beggs, of Macon, Ga.; Mr. Siebold, Mr. Henry Miller, and Mr. George S. Henderson. I think the balance are all dead.

Q. Who was president of the company since the war?

A. Judge Wyeth. Mr. J. W. Thomas, of Nashville, has been president since the time of his death. They had meetings since 1890. They had a meeting in 1891 or 1892 at Huntsville. I think they had a meeting every year. They held that at Huntsville.

Q. Who is the secretary and treasurer now?

A. Mr. Ambrose. I do not know his initials. He resides in Nashville, Tenn.

Q. Exhibit D, referred to in your direct examination as a time book, was that your time book?

A. For a part of the work before the war it was my time book.

Q. Does this book show accurately that time that the various hands worked for you on this railroad before the war?

A. No; it was work done on the Line Creek work. Going up the mountain to Guntersville.

Q. This shows the work by you after the war, too, does it?

A. No, sir; I think not. The other books show that.

246 Q. What did the work in finishing and equipping the road from Attalla to Littleton cost?

A. I don't know. I have not got it figured out. These books and vouchers will show. I can not give in round numbers what it did cost.

Q. When did you say that work was done?

A. In 1885 to 1888. I took that under the contract of September 14, 1883, from the Tennessee & Coosa Railroad Company; they were to pay me the cost of the road and 20 per cent for furnishing the money to complete the road. I kept an account of what it cost and gave them credit for all it earned.

Q. You never had any settlement other than that which Mr. Johnson made with the board of directors and when you were not there?

A. No, sir.

Q. You say the road was completed from Gadsden to Attalla in '70 or '71; which was it?

A. In 1871 we suspended work until 1875; Pennington did a lot of work from Eufula to Guntersville; we done a good deal of work between Attalla and the top of the mountain.

Q. Where is Shepard, the man that was with you in this work?

A. I think he is in Opelika. I don't know what his initials are.

Q. Where is Boyle?

A. He is dead. Mr. Colt is dead, too. He was another partner.

Q. What resolution was it that the lawyer of the Tennessee & Coosa Railroad wanted to have put in that book at the time you lost it?

A. It was to rescind a former resolution that they had put on there.

Q. Do you know how this book came in the lawyer's possession?

A. He was the company's lawyer in New York. Dr. John A. Wyeth took it up there.

Q. Where is M. Gilbreath?

A. He is dead.

247 Q. You say you hold the notes of persons who purchased lands from the Tennessee & Coosa Railroad, as shown by Exhibit K. How much do they amount to, in the aggregate?

A. I have not figured it out. I could not give it to you in round numbers. I expect it's more than \$50,000.

Q. Where did you get these notes?

A. I got them from the company. They were given to me under that resolution of September 14, 1883. The treasurer of the railroad, Mr. Rayburn, delivered them to me.

Q. How much of these notes have you collected?

A. This book, marked Exhibit —, will show.

Q. How much have you collected yourself on these notes?

A. I have not collected anything on the notes. What the company has paid me my account will show, I think it is several hundred dollars. I mean my account filed with Mr. Johnson's testimony.

Q. How much capital stock did you own in the Tennessee & Coosa Railroad Company?

A. I owned the majority of it. Thirty thousand dollars. I bought the stock before the war and some of it after the war.

Q. How much did you pay on the subscription of the stock?

A. I wasn't an original subscriber.

Q. You say that you were bringing that minute book from Washington to Guntersville for the purpose of having these resolution' that appear on book Exhibit Q put on the minute book that was lost?

A. Book Exhibit Q is the minute book that was used by the company after the other minute book was lost. That was the last transaction that was done.

Q. You say that this man Lewis obtained a judgment against the road and was about to sell it out. Where did he obtain that judgment?

A. At Gadsden.

Q. What were the assets of the road worth at that time?

A. Nothing but this land and the roadbed. It was worth considerable; I don't know how much; about \$30,000 or \$40,000.

248 Q. Judge Wyeth, who was president of the road after the war, was your father-in-law, was he not?

A. Yes, sir.

Q. Did you have any other relatives on the board of directors?

A. No, sir; no direct relatives; I had some by marriage. Henderson married my sister. Beggs' wife was a cousin of mine—distant relative.

Q. Who were the stockholders after the war in this road?

A. I was the principal stockholder.

Q. How much did you have after the war?

A. I think I had eleven or twelve hundred shares, of the par value of twenty-five dollars each. The balance of the stock was held by A, B, and C. Judge Wyeth held about one hundred shares. I held a majority of the stock.

By Mr. GOODHUE:

Q. The arrangement with the Manhattan Trust Company, set forth on page 4 of Exhibit Q, was it carried out, and did they convey to you the forty-four thousand acres of land mentioned here?

A. No, sir.

Q. And no release was obtained from you, as provided for here?

Q. None; nothing further was done in regard to this resolution.

Q. After 1885, state what work you did for the Tennessee & Coosa Company on the road between Gadsden and Attalla.

A. I put a locomotive on it and cars, and fixed up the bridges, repaired the track, put new ties all over the whole line, cleaned up the road and extended it down to the river at Gadsden; fixed up a depot at Gadsden, and put new steel rails on the road.

Q. State whether any of the work that you did for the East Alabama & Cincinnati Railroad is charged in your account against the Tennessee & Coosa Railroad.

A. No, sir; it was charged to the East Alabama & Cincinnati Railroad.

249 Q. You state, in answer to cross-examination, that there was an agreement by which the East Alabama & Cincinnati Railroad was to issue certain stock to the stockholders of the Tennessee & Coosa Railroad; did they carry out the agreement?

A. No, sir.

Q. Did the Tennessee & Coosa Railroad regain the road in an action of ejectment?

A. Yes, sir; it cost me about thirteen thousand dollars in litigation.

Q. Did the deed of the East Alabama & Cincinnati Railroad Company convey any lands of the Tennessee & Coosa Railroad?

A. No, sir; nothing but the roadbed.

Q. You said something of the fifty thousand dollars of capital stock; state how it was paid and what was paid.

A. Most of the contractors took stock in the Tennessee & Coosa Railroad for the balance that was due them for work that was done on the road. I bought the stock from outside parties; the rest of the stock that was subscribed for was paid for; that is, the original stock in the Tennessee & Coosa Railroad Company, part in work and part in cash. The part that I bought was paid for in full, but by the parties that subscribed for it. I was mistaken a little while ago if I said the stock was not paid up. Some of that stock brought two for one.

Q. Did the East Alabama & Cincinnati Railroad Company pay you what the Tennessee & Coosa Railroad Company owed you?

A. No, sir.

Q. Did they pay the floating debt of the company at all?

A. No, sir; they did not.

Recross-examination: By Mr. WHITE:

Q. Who did you buy your stock from?

A. From Mr. Shadwick, from Mr. Joseph B. Abrams, of Greenville, Ala., Hollingsworth, Greenwood, Gilbreath; they are all dead. I bought some from Mr. Hughes also; he is dead.

By Mr. GOODHUE:

250 Q. In any of these transactions with the railroad company in regard to this land, was there any trust, reservation, or any design to defeat any forfeiture to the United States?

A. Not one particle; the whole transaction has been fair and honest.

(Signed)

HUGH CARLISLE.

Order extending time to take testimony.

In the circuit court of the United States, southern division of the northern district of Alabama.

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| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD CO. ET ALB. | | |

In above-stated cause, it is ordered and decreed that the time for taking testimony on behalf of all parties interested herein be and the same is hereby extended to June 1, 1894, by which time it is ordered that all testimony be closed; and within three days after said first day of June, the examiner before whom said testimony is taken shall file the same in this court in said cause.

(Signed)

JOHN BRUCE, *Judge*.

MARCH 31, 1894.

(Endorsed:) Filed March 31, 1894. N. W. Trimble, clerk.

251 *Agreement to submit cause for final decree.*

In the United States circuit court for the southern division of the northern district of Alabama.

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| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD COMPANY et als. | | |

In the above-stated cause, it is agreed that the case be submitted for final decree, with leave to either party to take testimony until the first day of June, 1894, and the parties in this case may appear by counsel before Hon. John Bruce on the 10th day of July, 1894, to argue said cause. The papers in said cause shall be submitted to Judge Bruce on said day of July. On said 10th day of July Judge Bruce may proceed to consider said cause just as he might do in term time. And either party reserves the right to apply to Judge Bruce for a continuance of said cause; and it is agreed that Judge Bruce may consider such application for a continuance in the same way that he would consider an application for continuance of the cause at a regular term of the court; and any and all such decrees and orders may be made, in such case, by Judge Bruce in vacation with the same force and effect as if made in term time.

Counsel for the United States make this agreement solely for the purpose of speeding the trial of said cause, and with the understanding that they will make every effort to prepare said case for hearing at the time mentioned, reserving, however, the right to apply for a continuance at the time mentioned for cause.

(Signed)

EMMET O'NEAL,
United States Attorney.

(Signed)

AMOS E. GOODHUE,
for Carlisle and T. & C. R. R. Co. et als.

Endorsed:) Filed March 31, 1894. N. W. Trimble, clerk.

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Minute entry of March 31, 1894.

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| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD CO. ET ALS. | | |

Ordered and adjudged by the court that this cause be submitted for decree in vacation, as per agreement on file.

Amended answer of G. W. Bruce and John Mizell.

In the circuit court of the United States for the southern division of the northern district of Alabama.

THE UNITED STATES

vs.

THE TENNESSEE AND COOSA RAILROAD COMPANY, Hugh Carlisle, G. W. Bruce and John Mizell.

No. 40. In equity.

Come these respondents, G. W. Bruce and John Mizell, and under the leave of the court granted them, filed this their amendment to their answers heretofore filed in this cause:

1. These respondents, each for himself, admit the truth of the averments made in the first paragraph of the complainant's bill.

2. These respondents, each for himself, admit the truth of the charges and averments made in the second section of the bill of complaint in this case.

3. These respondents, each for himself, admit the allegations made in the third section of the bill.

4. Respondents each admit the allegations of the fourth section of complainant's bill.

5. These respondents each admit the allegations made in the fifth paragraph of the bill, except they each aver that said Tennessee & Coosa Railroad Company did not and had not, before the filing of the bill in this cause, built ten and 22-100 miles of said railroad. But they each aver that the said railroad built and completed, so trains could run thereon, was built by the East Alabama & Cincinnati Railroad Company, a corporation chartered under the laws of Alabama. All the other allegations in said fifth section are admitted.

6. Respondent' each admit that the allegations made in the sixth section of complainant's bill are true as stated.

7. Respondents admit the allegations of the seventh section of the bill of complaint are true.

8. Respondents admit that the allegations made in the eighth section of the bill of complaint are true, except that each of these respondents, who are in possession of the lands charged in said eighth section, that they are in possession of, deny that they hold or claim the same under any conveyance or deed from said Tennessee & Coosa Railroad, or its grantees; and they aver and state that they have each for himself been in possession of the particular lands they are charged with being in possession of since early in the year 1885; that they each entered thereupon under the advice and belief that these lands had reverted to the United States, under the terms and provisions of the act of June 3, 1856, granting said lands to said railroad company, as they and all other persons knew said railroad had not been completed in whole or in part at that time. That they have each remained in possession of said lands so possessed by them from the date named until the present time; have made valuable improvements thereon, consisting of dwellings and out-houses, barns, fences, and clearings, planting orchards, and, in fact, making homes thereon; and they each aver that since the passage of the act of

September 29, 1890, recited in the complainant's bill, these respondents have each claimed said lands under the terms of said act, viz: the right to enter the same under the homestead laws of the United States. And these respondents further answering said bill of complaint (the eighth and the ninth sections thereof) state that they are informed that
254 nearly or quite all of the persons named in the said sections and charged with being in possession of portions of said lands as therein stated, are in possession of said lands with which they are charged, but they are in possession of the same in the manner that these respondents are in possession, and not under any conveyance from said railroad company, or any of the grantees of said railroad company. All the other allegations made in said 8th and 9th paragraphs of said bill are true.

10. These respondents each admit that the allegations made in the 10th section of said bill are true, as therein stated.

11. These respondents each admit that, on information which they believe to be true, the charges made in the 11th, 12th, 13th, 14th, 15th, and 16th paragraphs of the bill are true.

12. Each of these respondents for further answer to the bill of complaint in this cause aver that the conveyances set forth and described in the exhibits to the original bill in this cause, by and under which Hugh Carlisle, one of the respondents to this bill, claims to own the lands described therein, are fraudulent and void; that said railroad company never received at any time, either before or after said conveyances were made, any valuable consideration from said Carlisle, or any other person, for said lands or any part of the same; and they each aver and charge that the indebtedness claimed by Carlisle, for which he claims these lands were conveyed to him, is simulated and false; that said Carlisle was, at and before the time said conveyances were made, paid in full for all the work and labor done on said railroad, for which he claims the account was due him—the basis of the consideration for said lands recited in said conveyance.

13. These respondents each further aver and charge that said Hugh Carlisle was paid in full for all work and labor done or performed by him on said railroad long before any deed or conveyance of said lands were made to him; that he, the said Carlisle, received some \$25,000 or more from the proceeds of the sale of the capital stock of said railroad company; that he also received some \$20,000 out of what was known as
255 the 2-per-cent fund, for and on account of the work and labor done and performed by him on said railroad; that said Carlisle sold said railroad, or the bed thereof, to the East Alabama & Cincinnati Railroad Company, about the year 1870, for which he took bonds of said East Alabama & Cincinnati Railroad Company to the amount of more than \$25,000, and, afterwards, on a foreclosure of said bonds of said East Alabama & Cincinnati Railroad Company, the said Carlisle came into the court where the foreclosure was had, proved his bonds, and received some \$20,000 in money thereon; and, after this foreclosure, said Carlisle began an action to recover possession of the said railroad, in which he recovered possession of the same, and then sold to the Louisville, Nashville & Chattanooga Railroad Company said Tennessee & Coosa Railroad, for which he received more than \$100,000 in

bonds of said Louisville, Nashville & Chattanooga Railroad Company, and sold the same for something over \$85,000 in money cash—all of which said sums of money said Carlisle has received for work and labor on said Tennessee & Coosa Railroad, worth less than \$50,000; and now, in addition thereto, is by a fraudulent and simulated debt (barred by the statute of limitations for more than fifteen years) claiming the lands described in the conveyance set out as exhibits to the original bill, and these respondents' lands, or, rather, the lands upon which they have resided and improved and claim, as hereinbefore stated, the right to homestead, under the laws of the United States.

These respondents, having fully answered said bill of complaint as far as they are advised is necessary for them to answer the same, pray hence to be discharged, with their reasonable costs in this behalf expended, and, as in duty bound, they will ever pray, etc.

(Signed)

LEWIS E. PARSONS, JR.,
Solicitor for Respondents Bruce and Mizell.

(Endorsed:) Filed April 25, 1894. N. W. Trimble, clerk.

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Minute entry of June 1, 1894.

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| UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY, | | |
| et als. | | |

Upon motion of U. S. attorney it is ordered that the time for the taking of testimony by all the parties to this cause be and the same is hereby extended until the first Monday in September, 1894.

Affidavit of Hugh Carlisle as to his solvency.

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| UNITED STATES | } | No. 40. In equity. |
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| TENNESSEE AND COOSA RAILROAD COMPANY, | | |
| et als. | | |

THE STATE OF ALABAMA, *Montgomery County:*

Before me personally appeared Hugh Carlisle, who being duly sworn, deposes and says that he is not insolvent, but is amply solvent, worth fully fifty thousand dollars over and above all liabilities, not including property involved in this litigation. That affiant owns ten Elyton Land Company bonds of one thousand dollars each, fifteen thousand dollars worth of unencumbered real estate in Guntersville, ten thousand dollars of bank stock, and more than fifteen thousand dollars of other property.

(Signed)

HUGH CARLISLE.

Sworn and subscribed before me this 10th day of July, 1894.

J. W. DIMMICK.

(Endorsed:) Received and filed July 10, 1894. N. W. Trimble, clerk.

Decree discharging receiver.

In the United States circuit court for the southern division of the northern district of Alabama.

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| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY, | | |
| et als. | | |

In above stated cause, it having been made to appear to the court that Hugh Carlisle has filed his answer denying the allegations of fraud and collusion in the original bill, and asserting that he is a bona fide purchaser of the lands described in deeds made exhibits to original bill, and it further being made to appear that said Hugh Carlisle is not insolvent, as charged in said bill, but is solvent, and said Hugh Carlisle having taken testimony establishing the allegations of his answer, and the United having taken no testimony to establish the allegations of the bill or to controvert the allegations of the answer, and it now appearing to the court that there is no further necessity for a receiver in this case, it is therefore ordered and decreed, that the receiver heretofore appointed, viz, Owen T. Holmes, be and he is hereby discharged. Said receiver will turn over at once to said Hugh Carlisle the possession of all lands and property now held by him as receiver, including all rent notes payable to him as such receiver. He will at once proceed to file his account and vouchers for a final settlement of his said receivership with the clerk and register of this court.

Nothing contained in this decree shall prejudice the rights of any party to this cause upon final hearing, and the clerk and register of this court is directed to set this case down for final hearing upon its merits on such day of the September term, 1894, of this court as he may deem advisable. The injunction heretofore granted in this case is dissolved, so far as it applies to the said Hugh Carlisle.

Said Carlisle is directed, as he collects the rent notes turned over to him by the receiver, to deposit the proceeds, subject to the further order of this court, in the First National Bank of Birmingham, Ala.

Witness my hand this 10th day of July, 1894.

(Signed)

JOHN BRUCE, *Judge.*

(Endorsed:) Received and filed July 10, 1894. N. W. Trimble, clerk.

Minute entry of September 3, 1894.

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| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY, | | |
| et. al. | | |

For good cause shown, the hearing in this cause is continued until Wednesday, September 5, 1894.

Minute entry of September 5, 1894.

THE UNITED STATES
vs.
TENNESSEE AND COOSA RAILROAD COMPANY,
et. al. } No. 40. In equity.

This cause coming on to be heard, by agreement in open court, this cause is set down for hearing on September 26.

259 *Testimony of Hugh Carlisle.*

In the circuit court of the United States for the southern division of the northern district of Alabama.

UNITED STATES
vs.
THE TENNESSEE & COOSA RAILROAD COMPANY. } No. 40. In equity.

BIRMINGHAM, ALA., *September 18, 1894.*

Pursuant to adjournment, the session of the commissioner was convened on the above-named date, and the following proceedings were had. Present: N. W. Trimble, commissioner; Amos E. Goodhue, attorney for Hugh Carlisle; Frank S. White, attorney for Government.

MR. HUGH CARLISLE was recalled, and, being sworn, testified as follows:

Continuation of cross-examination by Mr. WHITE:

Q. When did you commence work for the Tennessee & Coosa Railroad?

A. In July, 1859.

Q. When was your first estimate made?

A. I think it was done when they had the money; 90 per cent of the estimate was made up monthly. I do not think the first estimate was made quite at the end of the first month; it was made some time between that and the next month.

Q. Did you get an estimate in the month of August for the work done in July?

A. I don't remember; I haven't got the books here.

Q. What book is that you refer to, and tell where it is?

A. They are amongst my papers; I don't know whether I can find them or not.

Q. Have you looked for them—I mean the estimates?

A. I haven't thought about them.

260 Q. How many sections did you have?

A. You mean before the war?

Yes.

A. I think some six or seven sections. I don't remember the numbers.

Q. How was it numbered from Guntersville this way?

A. It was numbered in divisions. I could not tell where the first division was named.

Q. How many divisions are there?

A. I think there were three or four.

Q. Where did you commence work?

A. Right from Guntersville.

Q. Do you remember what section that was?

A. I don't remember the section; I know the work. It was about two miles from Guntersville where my camp was.

Q. Where did you come from when you went to work there?

A. I came from building the road from Tusculumbia to Florence.

Q. What force did you put to work when you commenced to work there?

A. A pretty large force. I brought up 100 Irishmen from Memphis. I had my own slaves, some thirty-six. I had a force of about 300 men. A large portion of them were Irishmen and negroes.

Q. Was the work done with hands?

A. Yes; all done with labor. I had a good deal of tools. In those days there was very little scraper work done. I had a good many tools there. When I first went there I filled the streets with my wagons and carts.

Q. You mean these self-loading scrapers were not used?

A. Yes; I plowed it with mules and hauled it with carts.

Q. What means did you have when you went there?

A. I was worth more than I am now. I had ample means. I was worth one hundred thousand dollars, I reckon, in slaves and property. I did not have that much money.

Q. About how much money did you have?

A. I don't know how much. I don't remember.

261 Q. Did you have a thousand dollars?

A. Yes.

Q. How much more?

A. Many thousands.

Q. How many?

A. I suppose somewhere about thirty thousand dollars.

Q. Where did you keep that?

A. In the safe. I did not keep it in the bank.

Q. Did you finish up near Guntersville before you commenced other work?

A. No, sir; I bought out a good many other contractors and finished their work.

Q. How far did your work extend towards Gadsden?

A. This side of Littleton. Between Littleton and Attalla.

Q. Where did you do the main work?

A. On the Guntersville end.

Q. Had that been worked on before?

A. That was all new work when I started it. I don't remember what section that was.

Q. In round numbers, how much work did you do before the war?

A. I haven't figured it up; I don't remember.

Q. Can't you approximate it?

A. Somewhere in the neighborhood of one hundred thousand dollars.

Q. What kind of work did you do?

A. Grading and building culverts, and furnishing timber and trestle work. That was about all the kind of work I did.

Q. How much was you paid, in round numbers?

A. I haven't figured that out either.

Q. Well, approximate it.

A. About sixty or seventy thousand dollars.

Q. When was the latest payment you received—the latest date before the war or at the beginning of the war?

A. The two estimates before the war were not in money. In the summer of 1860, I think, was my latest estimate, and I worked two months after they run out of money.

262 Q. Look at Exhibit D of the testimony of Mark Johnson and tell me what book that is.

A. I presume it is just as it is represented there. It is an account book kept by the company.

Q. Showing the estimates of the contractors?

A. Yes, sir.

Q. Did they have any other book like that?

A. I think they had another one.

Q. Examine that book and show what date it commenced and when it ends.

(Witness examines book.)

A. This book seems to show that the first account is dated January 1, 1858, and the last item I find here is dated April 26, 1859. There is another book besides this. I find here November 22, 1861. That is about the time the work stopped.

Q. Whose handwriting is that book in?

A. Mr. S. K. Rayburn.

Q. What was he at that time?

A. He was secretary part of the time, and president part of the time; he kept the books of the company. This book is a mere private book of Rayburn's. He had the treasurer's book, which I have not been able to find.

Q. Does it not purport to have an account of the construction of the railroads?

A. He put some of it down in his own handwriting, and some of it is not.

Q. You say that it is a mere private book of Rayburn's; how do you know?

A. I have seen him make entries on it; there are many entries in here that are not Rayburn's. It is not mostly in Rayburn's handwriting; mostly in the chief engineer's, George R. Armes.

Q. You say the last three items show they are not in the handwriting of Mr. Rayburn, dated November 22, 1861.

A. I think neither one of these is Mr. Rayburn's handwriting.

263 Q. On page dated July 10, 1861, is that in Mr. Rayburn's handwriting?

A. Yes, sir.

Q. On page headed June 10, 1861, whose handwriting?

A. George H. Armes. He was chief engineer at that time.

Q. All the estimates are in Armes' handwriting, are they?

A. Yes, sir.

Q. The estimates beginning on page headed Guntersville, March 11, 1859, whose handwriting? Up to and including page headed Guntersville, October 10, 1859, are in the handwriting of Mr. Rayburn, are they not?

A. Yes, sir.

Q. And the entries made from page headed Guntersville, November 10, 1859, showing estimates, and the next succeeding page, and all of the three pages thereafter, except the last entry, are in the handwriting of Mr. Armes, are they not?

A. Yes, sir.

Q. Mr. Armes continued to be the chief engineer until the work ceased?

A. Yes, sir.

Q. Where did you get this book, Exhibit D to Mark W. Johnson's testimony?

A. I got it amongst the company's books. The company's papers were turned over to me when the road was turned over to me. I think it was September, 1883. The book has been in my possession ever since.

Q. You say all the books and papers of the company were turned over to you at that time?

A. Yes, sir; all the notes, including that book. There were several other books. I don't remember them all now.

Q. Were all the papers of the company turned over to you?

A. Yes, sir.

Q. From whose hands did you receive them?

A. Mr. Rayburn's. It was at Guntersville that everything was turned over to me. They were allowed to remain there in the company's office, but I had control of them.

Q. When did you take them away from the company's office?

264 A. Several years ago. I don't remember how long.

Q. When was it? Was it before or since the death of Mr. Rayburn?

A. Since the death of Mr. Rayburn. I got them from Mr. Will C. Rayburn, son of S. K. Rayburn, not very long after his death.

Q. How long after his death—a month or a year?

A. It was more than a month.

Q. Did you demand them from young Rayburn?

A. No, sir; it was not necessary. Mr. Rayburn knew they belonged to me. He turned them over to me of his own accord, without any suggestion or demand on my part.

Q. Now, isn't it a fact that you demanded these papers of him?

A. I don't think I did. They have never disputed my rights to them.

Q. What books did you get from him?

A. Exhibit D to Johnson's deposition, and Exhibit C to my deposition. I don't remember what other books. I did not get all the papers belonging to the company, not half of them. I got that last report that he made to the stockholders at the commencement of the war, and my proposition to build the road, dated July, 1859.

Q. Did you get all the papers that were there?

A. All that I considered that were of use to me. I don't know that I did leave any papers with Rayburn; they were kept on shelves in the company's office at Guntersville.

Q. Did you get them, or did Rayburn hand them to you?

A. My clerk got them; I got some of them; a young man by the name of Saunders got some of them.

Q. Where have you had them since then?

A. At my house.

Q. Did you get any other book, or books, except these two that you mentioned, at that time from Rayburn, that you now remember?

A. Not that I can remember.

Q. Where is the minute book, or books, of the company, from the time of its organization up to the present time?

265 A. I would just refer you to my answer on this question in my former deposition.

Q. How many minute books were there?

A. Just one.

Q. That embraced what time?

A. Embraced all the time I was there; from 1859 to the time the company turned the road over to the East Alabama & Cincinnati folks, which was in 1871 or 1872.

Q. In your other examination you stated that that book was lost.

A. Yes, sir; there was only one book, and I lost that somewhere between Washington and Parkersburg.

Q. You hand me a paper, headed "Washington Post," of Wednesday, September 19, 1888, in which is published a reward of \$25.00 to find a minute book of the Tennessee & Coosa Railroad Company, which was lost on August 29, last, which means August 29, 1888; you say that reward, or offer, was published in that paper at that time?

A. I sent the money at that time to General Forney to have it done.

(The newspaper containing said reward is attached to the deposition of Hugh Carlisle, and marked exhibit —.)

Q. How came you to lose that book?

A. It was strapped on my satchel on the outside.

Q. What size book was it?

A. About the size of Exhibit D to Mark Johnson's testimony. The valise was so full I could not get it inside. I had it at the hotel at Washington, and the clerk at the hotel, at the Emmett House, wrapped it in a piece of paper and strapped it to the satchel.

Q. How was that book bound?

A. It was bound a good deal like the book Exhibit B to Mark Johnson's testimony.

Q. And was about the size and shape of Exhibit D?

A. About the size of Exhibit Q to my former deposition; not quite so long as that.

Q. Did you get that book that was lost at the same time you got the other books from Rayburn?

266 A. No; I got that book in New York, from the company's lawyer, Hugh L. Cole.

Q. You say you carried that book back to have the resolutions recorded therein which appears on the first five pages of Exhibit Q to your deposition?

A. Yes, sir.

Q. Well, now, this resolution that you speak of in Exhibit Q says that on the 2d day of April, 1888, a resolution was passed by the directors of the Tennessee & Coosa Railroad Company, as follows: Well, now, if that book was not lost until August, 1888, why is it that that resolution was not recorded in that book?

A. I think it is in it. Not this resolution of September, 1888, but the resolution referred to therein.

Q. Do you know that, or is that just your opinion?

A. I believe I know it; I handled the book at Attalla, and looked at it often; I was familiar with its contents. I think I can say under oath that the resolution referred to was recorded therein.

Q. And that was the only minute book from the year of 1859 until you lost it?

A. Yes, sir; my opinion is they had no other; I never saw any other; I was director in the company just before the commencement of the war continuously until I lost the book; we had a meeting every year when we could get together, during the war; the meetings were all set out in that book that was lost.

Q. Well, the company's office at the time you lost this book was in New York?

A. Yes.

Q. Who was the president then?

A. A man by the name of Quintard.

Q. Well, now, Mr. Carlisle, may not that book which you lost have been a book that Quintard and the new directors got up in New York?

A. No; it was the old book of the company; Dr. John Wyeth took the book to New York; he was a director.

267 Q. And you say that book would show a meeting of the directors and stockholders every year during the war?

A. Yes, sir; I think it would. We kept up our organization during the time of litigation with the East Alabama & Cincinnati. We would advertise the meeting in the county paper there and at the court-house.

Q. Then you kept having meetings of the stockholders after the war, all the time up to the time you sold to the East Alabama & Cincinnati Railroad?

A. Yes, sir.

Q. Well, after it was sold out to the East Alabama & Cincinnati, did you have any further connection with it as director?

A. No, sir.

Q. Did you ever hold a meeting after that?

A. Yes, sir, several; we held meetings to employ counsel. The record of these meetings are in the lost minute book.

Q. Can you tell how it is that the officers of the company, when the office of the company was moved to New York carried with it the minute book, and not the other books which you exhibit on the trial here?

A. I can't tell why; I suppose they wanted it to pass the resolutions set out in it.

Q. Was the office kept and maintained in Guntersville during the time that Quintard was president in New York?

A. Yes, sir; and before the war the company had an office of their own; the Yankees burned it up.

Q. Did you go on to New York on purpose to get that book to have that resolution recorded in it?

A. Yes, sir; I went there for the purpose of rescinding that former resolution.

Q. You say that Mr. H. L. Cole gave you that book?

A. Yes, sir.

Q. Did you know where he got the book?

A. He was the company's lawyer; he got it from the company. He wrote that resolution and handed it to me, and I suggested to him that I had better take that book and have the resolution put in the book, and he said, "Yes, that is the place to put it," and he got up and handed me the book in his office.

268 Q. Then how long did you remain in New York after you got the book?

A. I went home immediately.

Q. Did you examine it at Washington?

A. Yes, sir; I know that it was that book, and know that it was there while I was stopping at the hotel.

Q. You say the book was given to you to have the resolution put in it; why was not that done in New York?

A. Because the directors were not there.

Q. Were there a majority of the directors in New York at that time?

A. No; there were only three there, and I was four, and it took five to constitute a quorum.

Q. Then this resolution rescinding this resolution was passed after you got there?

A. No; it was passed at Guntersville; there was a quorum there; I think there were six or seven directors there.

Q. Then the resolution dated 2nd April, 1888, as set out in Exhibit Q of your former deposition, was passed in Guntersville on the day that it bears date, and the resolution dated September 14, 1888, amending the resolution dated April 2, 1888, was passed in New York without your knowledge?

A. Yes, sir.

Q. Now, was that resolution of May 14, 1888, on that lost book?

A. Yes, sir.

Q. You say that resolution of May 14, 1888, was recorded in that book. Do you know that to be a fact, or is that simply your opinion?

A. I know it to be a fact.

Q. I see in this resolution adopted on September 14, 1888, that the company proposed to give you one hundred thousand dollars in the first mortgage bonds of the company, and five thousand dollars in cash for your entire interest in the road, and lands granted and your stock?

A. All I conveyed was the stock?

269 Q. This resolution of April 2, 1888, provides as follows: "That in consideration of the delivery to the Tennessee & Coosa Railroad Company by Hugh Carlisle of all the capital stock of the company owned by him, together with all claims upon the lands of the company and its property, in all and every particular in full, the Tennessee & Coosa Railroad Company agrees to pay to Hugh Carlisle one hundred thousand dollars of first mortgage bonds as soon as they can be

gotten ready for issue, and five thousand dollars in cash from the first assets of the company." Now, what claims did you have upon any of the lands of the Tennessee & Coosa Railroad, other than those lands which have been conveyed to you under the contract of September 14, 1893?

A. The railroad turned over everything to me—lands, notes, and everything. I did not consider that the railroad had any interest in it.

Q. You were paid by the Tennessee & Coosa Railroad Company this one hundred and five thousand dollars of first mortgage bonds of the company, were you not?

A. Yes, sir.

Q. And these bonds were cashed, were they not, by some syndicate?

A. Baxter, Shook, and associates bought the claims against the Tennessee & Coosa. They gave me about par for them. I got about \$88,000 for them.

Q. Is that all they paid you, \$88,000?

A. That is all. I paid some claims of the company. I paid a note that was owed Mr. Wyeth for money that he advanced, and also paid Mr. Beggs. Both claims amounted to \$26,000 or \$27,000.

Q. About how much did Baxter and Shook pay you in all?

A. About \$120,000 in cash. I paid out of that \$3,000 to Manhattan Trust Company, \$3,000 to Carey, and \$26,000 or \$27,000 to Beggs and Dr. Wyeth.

Q. How much did you pay Beggs?

A. Nearly \$13,000.

Q. How much did you pay Dr. Wyeth?

A. About the same.

Q. Mr. Beggs and Dr. Wyeth are both brothers-in-law of yours, are they not?

270 A. No; Dr. Wyeth is a brother-in-law; Mr. Beggs married a cousin of mine.

Q. You start off in your account against the Tennessee & Coosa Railroad Company with an item of \$32,326.76, dated December, 1885. Now, where is that statement of Rayburn's?

A. That is a statement made to my bookkeeper. It is not in writing.

Q. You mean that is what Rayburn said to your bookkeeper, that was due at that time?

A. Yes, sir.

Q. Have you the items that can show the indebtedness at that time?

A. You mean the balance on the different estimates?

Q. Have you a memorandum of it?

A. The engineer's book will show it; I mean Exhibit C to my deposition; that is the only way I have of showing it.

Q. Did you keep any books yourself?

A. Yes, sir.

Q. Where are your books that show that?

A. I don't know whether I can put my hands on any of them now or not.

Q. Give us your book that shows these items at that time.

A. I don't think I kept any memorandum of these items at all. I think that I depended upon the honesty of the company and Mr. Armes.

Q. Well, now, you start out here with this sum that I have spoken of, \$32,327.76, due January 10, 1880, as per statement of S. K. Rayburn; have you any knowledge of your own that the company owed you that money?

A. Yes, sir; I have.

Q. Then you say at the close of the war they owed as much as \$32,327.76, of your own knowledge?

A. Yes, sir.

Q. And that was for work in grading, building culverts, bridges, and trestles on the road?

A. Yes, sir.

Q. Did the Tennessee and Coosa Railroad Company pay off these contractors every month for the work done during the previous month for work done during the war?

A. Up to two months before the war they had the money, but after that they had none. I was paid 90 per cent of the estimate. I never got a final estimate.

Q. Where were you working in the fall of 1861?

A. I was working between Guntersville and the other side of Littleton, about twenty-five or thirty miles.

Q. What particular places?

A. Ascending the mountains, coming this way towards Gadsden. The other part was going from the other side of Littleton to the top of the mountain towards Guntersville.

Q. This is where you failed to get your last estimate paid?

A. Yes, sir.

Q. Weren't you to take a good deal of this pay for work on the road in payment of your subscription of stock in the road?

A. No; I never subscribed for any stock; I bought my stock
273 outside. The stock I bought was all paid up; my balances were to be paid in money.

Q. And you became a director before the war. What year?

A. Sometime in 1860, and I was continuously a director from that time until I bought this land from the company.

Q. And you knew when you bought the land from the company that the road had not been completed from Gadsden to Guntersville?

A. Yes, I knew it.

Q. You knew that no twenty continuous miles had been completed?

A. Yes, sir.

Q. And you knew that at that time the ten years given by the act of Congress to build the road had expired?

A. Yes, sir.

(Council for the Government here requests that Mr. Carlisle furnish any of his private books, or books of the Tennessee & Coosa Railroad Company in his possession, showing the indebtedness of the Tennessee & Coosa Railroad to Mr. Carlisle, prior to the closing of the year 1861.)

AFTERNOON SESSION.

Cross-examination (continued):

Q. I see, Mr. Carlisle, that there is some work let to Carlisle & Henderson in constructing the Tennessee & Coosa before the war?

A. That is a mistake, that was all taken by Hugh Carlisle. Mr. Henderson was in Scotland when I took that work. The firm of Carlisle & Henderson had no claim against the Tennessee & Coosa Railroad; I took the contract when he was in Scotland.

Q. Did you have any work with any partner?

A. No, sir; all the claim I had was my individual claim, \$32,326.76; that was done before the war.

274 Q. You say this resolution, which is recorded in Exhibit Q to your deposition, was handed to you by Mr. Hugh L. Cole, of New York?

A. Yes, sir; he wrote it.

Q. Had it then been adopted when he handed it to you?

A. No.

Q. This simply purports to be a record of that resolution; where is the minute that it was adopted?

A. That is all there is of it.

Q. This don't show any meeting of the board?

A. There was a meeting of the board; six of us met.

Q. Did you ever have a meeting of the board after that time?

A. Yes, sir.

Q. Why are they not recorded in here?

A. We had no meeting since that; that is the last one.

Q. In whose handwriting is this writing here, this resolution recorded in Exhibit Q?

A. That is my wife's handwriting.

Q. Where is that original resolution that Cole gave you?

A. It is among my papers somewhere; I have seen it.

Q. What directors were present when this was adopted, this resolution set out in Exhibit Q?

A. Mr. Henry L. Miller, Wendolin Seabold, George Beggs, Judge Wyeth and myself. There was a quorum without me; I did not vote on the matter at all. I did not vote on the resolutions that were passed to sell the lands.

Q. When did you cease to act as a director?

A. When they turned the road over to a New York party, in April, 1888.

Q. Did you resign as director then?

A. Yes, sir.

Q. When did your connection with the organization cease?

A. It is now carried on through the Nashville, Chattanooga & St. Louis Railroad.

Q. When did your connection with it cease?

A. I never have resigned.

Q. Did you ever attend a meeting since the 14th of September, 1888?

275 A. No.

Q. Do you know of any meetings being held since that time?

A. Yes, sir.

Q. Where were they held?

A. One in Huntsville and one in Nashville.

Q. At the time this resolution was adopted, September 14, 1888, who were the other directors besides those you mentioned?

A. There were eight directors besides the president.

Q. Who were those who lived in New York?

A. Dr. John Wyeth, Henry Braeme, and I don't know the initials of Quintard.

Q. Who was president at that time?

A. Quintard.

Q. He was president at the time this resolution was adopted?

A. Yes.

Q. He was not present at the meeting in Guntersville?

A. No.

Q. Was this same resolution passed in New York at that time?

A. Yes, sir; it was passed in Guntersville, too.

Q. Who was present at the New York meeting when it was passed?

A. George Beggs, Seabold, Dr. Wyeth, this man Braeme, and Quintard, five of them.

Q. If it was passed by a majority of the board there, why did you want it passed again in Alabama?

A. There must be some mistake about the dates of that. Are they both of the same date?

Q. I am asking you of this resolution of September 4, 1888, in Exhibit Q.

A. That was passed in Guntersville; it was not passed in New York.

Q. So the president of the road was not present when this was passed?

A. No, sir; Quintard was not present.

Q. Who was president pro tem?

A. Abram was president pro tem.

276 Q. I see in this resolution, rescinding resolution, that the Manhattan Trust Company is requested, by the board of directors, to convey to you 44,000 acres of land. What were they to convey you that for?

A. For my bond.

Q. For your one hundred and five thousand dollars of bonds?

A. Yes, sir.

Q. What did you say was the consideration for which the bonds were given?

A. My stock in the road—nothing else.

Q. You did not include your indebtedness against the road?

A. No.

Q. How much stock did you have?

A. Very near 1,200 shares; a little over a majority of it.

Q. Each share was \$25?

A. Yes.

Q. That would make \$30,000?

A. Yes.

Q. Then you got \$105,000 of the first mortgage bonds for \$30,000 of stock?

A. Yes.

Q. That is how you got the bonds?

A. Yes.

Q. Had that stock paid any dividends up to that time?

A. No; but it was very valuable at that time.

Q. Has it paid any since?

A. No; it has not.

Q. You say it was very valuable. What made it very valuable?

A. From the fact that it represented all that road, and the \$250,000 we got from the State, being a grant from the Government of the United States to the State of Alabama for the purpose of connecting the navigable waters of the Tennessee and Coosa rivers with the Gulf. This five per cent was a grant from the Government of the United States to the State of Alabama for that express purpose; it was called the two and three per cent fund.

Q. When was that grant made, and where is it found?

A. I think that was the condition of the State entering into the Union in 1819, that the Government of the United States was to give the State of Alabama five per cent.

Q. Isn't it a fact that that five per cent was to be used by the State for internal improvements of any kind?

A. Yes, sir.

Q. Mr. Carlisle, after you quit work on the Tennessee & Coosa Railroad, in the fall of 1861, where did you go then?

A. I went to making saltpetre in Jackson County, Alabama.

Q. How long did you continue there?

A. Until the Yankees drove me out, in 1862. I then went to making salt in Virginia to save the Confederacy. In Virginia I was in a little place called Glade Springs; I remained there until I was drove out again, in 1864; I then went to southwestern Georgia.

Q. How long did you remain there?

A. Until the winter of 1865.

Q. Where then?

A. I started from there and carried twenty-seven of my slaves to Texas. I got to Texas on the Brazos River.

Q. How long did you stay there?

A. Until the war was over and the slaves were free, and then came back to Alabama.

Q. Where was it that your cotton was destroyed during the war?

A. On the plantation above Guntersville. I got from the Federal Government about \$1.35 per pound for my cotton.

(The above question and answer was objected to by counsel for Mr. Carlisle, because it is utterly and entirely irrelevant and immaterial.)

Q. You collected that claim, then, on the ground that you were a British subject?

A. Yes, sir; which I was. I had never declared my intention up to that time.

278 Q. You say this stock in the Tennessee & Coosa Railroad was valuable. It had never paid any dividends up to that time, and the \$250,000 which it had gotten from the Government it had squandered and spent, and the company owed you a large debt which you had been wanting, and yet you say the stock had been worth more than three for one?

A. Yes.

Q. You say you turned over to the company your stock. Well, now, who did you turn it over to? What particular person?

A. I turned it over to Henry I. Braeme and Quintard, of New York.

Q. To what particular person?

A. I delivered it to Dr. John Wyeth; he was a director in the company.

Q. Did these people buy any of the other shares?

A. No; I went to work and bought all the balance. I gave various prices for it, all the way from fifty cents to a dollar.

Q. Did you buy any below fifty cents?

A. No; I don't think I did.

Q. Did you buy A. G. Henry's stock?

A. No; I bought some from one of the contractors, Mr. Seibert, about thirty shares; I don't remember what I gave him.

Q. Did you give as much as fifty cents?

A. I bought none less than that. I bought some from one of the contractor's widow, twenty shares.

Q. What did you give for that?

A. I think 75 cents. Then I bought from the Greenwood estate some twenty shares; I gave for that, I don't know exactly, about 50 or 60 cents.

Q. How much did you buy in all after you sold to the Tennessee & Coosa people?

A. Several hundred shares.

Q. What did you do with that?

A. I gave it to the company.

Q. Did they pay you anything for it?

A. Yes; they agreed to give me a depot and land, which they did.
279 I agreed to give them right of way to my land, and a deed to two acres of land for section house. I mean my land between Gunter'sville and Gadsden. The right of way had never been granted; it belonged to me. I mean it was over these lands the company conveyed to me.

Q. What else did you get besides the depot?

A. They agreed to give me a deed to everything.

Q. What do you mean by everything?

A. All the lands, all the other lands that were granted by the act of Congress, that I had not gotten under that contract.

Q. They agreed to give you a deed to all the lands that had been granted by Congress?

A. Yes.

Q. Did they make that deed to you?

A. Yes.

Q. When was that deed made?

A. The deed was made in 1890.

Q. Wasn't it made after this suit was brought?

A. Yes.

Q. It was made in 1893, wasn't it?

A. I think it was made before the suit was brought; I can tell you by going and getting it. My recollection is that it was before the suit was brought in 1890.

Q. Who was that deed made by? who was the grantor?

A. J. W. Thomas, president of the Nashville, Chattanooga & St. Louis

Railroad; he was president of that company and president of the Tennessee & Coosa Railroad; it was a joint deed of the two companies.

(Objected to by counsel for Mr. Carlisle, because the deed is the highest and best evidence.)

Q. There was a deed made by the Tennessee & Coosa Railroad to the East Alabama & Cincinnati Railroad?

A. Yes; a conditional deed.

Q. You were present and consenting to that deed being made?

A. I objected to it.

Q. Did that appear anywhere on the minute books of the company?

280 Y. Yes; I objected to the meeting, because I did not think the East Alabama and Cincinnati had any means to carry it out.

Q. Where will you find that?

A. It is on the minute book that was lost. I felt like I could build the road before this company could.

Q. Was that your only objection?

A. Yes, sir.

Q. In that deed the East Alabama & Cincinnati Railroad assumed to pay all the indebtedness of the Tennessee & Coosa, your debt was the balance?

A. Yes, sir.

A. And the amount was set down not to exceed \$25,000?

A. Yes, sir.

Q. The debt of Wyeth and Beggs, which you collected at the time you got the bonds from the Tennessee & Coosa, was an old debt made before the war?

A. No, made since the war; Dr. Wyeth had the bonds printed, and paid lawyer's fees, and spent money for the company. Beggs' note was for money loaned since the war; the company carried the road on with the money they got from Beggs.

Q. So, then, that money that the company owed Beggs, about \$12,000, was money advanced to the company after the East Tennessee had failed to carry out its contract?

A. Yes, sir.

Q. Will you look on your accounts and show where you gave the company credit for that money which Beggs advanced?

A. I did not consider that it was my money; he loaned it to the Tennessee & Coosa Railroad Company. I did not give the Tennessee & Coosa Company credit for it; I did not charge them, either, with the money when I paid it out, which I ought to have done.

Q. But you were building the road on your own account, and were to get 20 per cent on the amount expended?

A. Yes, sir.

Q. Now, when the company furnished the money, by having borrowed it from Beggs, why didn't you give the company credit for it?

281 A. I paid it out of the money that I got for the bonds. I did not get it; the Tennessee & Coosa got it.

Q. What did the Tennessee & Coosa do with it, if you did the work?

A. They had other debts to pay.

Q. Then, if it went in the construction of the road, why didn't you give the Tennessee & Coosa Railroad credit for it?

A. I paid it with the money I got for the bonds. They looked to me, as well as the railroad company, for it. The railroad company could not have gotten it without me.

Q. They looked to you?

A. Yes.

Q. Was it your debt, or was it the company's debt?

A. I told them that I would see that it was paid, and I did.

Q. Was Wyeth's debt the same way?

A. Yes. Wyeth used a good deal of it in paying for engraving bonds; I don't remember the amount; I believe, some \$2,500.

Q. What issue of bonds was that?

A. It was the issue of April 2, 1888.

Q. You said Beggs looked to you as well as the road. He had a judgment against the road, didn't he?

A. Yes.

Q. He had the company's note for it?

A. Yes.

Q. Not yours?

A. No.

Q. In your accounts now, with the Tennessee and Coosa, do these items, the money paid to Beggs and Wyeth, appear anywhere?

A. I did not charge the company with it. I did not credit the company with it. I paid it to them. The company is not entitled to any credit.

Q. Will you tell us how much debts the Tennessee and Coosa Railroad owed at the time it sold out to the East Alabama & Cincinnati, except what it owed you?

A. Not much. It owed a man by the name of Lewis some 282 \$1,300. I compromised and paid him. They owed several little bills around. The principal debt was to me.

Q. Can you approximate the amount of the indebtedness besides yours and Lewis?

A. Very little.

Q. What do you mean by little?

A. I mean two or three hundred dollars; nothing more than that. I am familiar with the status of the Tennessee & Coosa Railroad. I have never heard the company dunned for what it owed. I was a director of the company, and familiar with its affairs.

Q. Did the company keep any account book during these years to show what it was indebted to the people?

A. I suppose they did. I don't know where the book is; I may have it; I don't think I've got it now.

Q. Do you remember to have had it?

A. Don't remember of having it.

Q. Do you remember of ever having seen it?

A. Yes; they kept a treasurer's book. Rayburn's book shows it; I mean Exhibit D; I don't remember whether they kept any regular account book.

Q. Was anything of this indebtedness appearing in that minute book that was lost?

A. They passed resolution showing that they owed it to me. There were resolutions in for other people; one for Lewis.

Q. Did the company ever furnish its creditors with certificates of indebtedness of its debts?

A. They gave notes when they could not pay it. They never gave me any notes; they gave Beggs one note and Wyeth one.

Q. Who signed these notes?

A. The president of the company.

Q. Who was president?

A. Rayburn, Wyeth, and Mr. Quintard were president at different times.

Q. Was yours and Lewis' the only balance that was carried over from the ante-bellum work?

283 A. Yes; the men that took the grading, outside of myself, took stock for the balance. I did not take any stock.

Q. You had 1,200 shares, approximately?

A. Yes.

Q. Give us in detail from whom you bought that stock.

A. I can tell you a part of it. I bought some from Hollingsworth (Bill Hollingsworth), I think some \$3,000 at par value; bought some from John A. Reese, some \$3,000 or \$4,000 worth at par; some from a man by the name of Shadwick, some \$5,000, I believe, approximate; bought some from Mr. Abrams, the chief engineer of that road, I think some \$3,000 or \$4,000; bought some from the estate of Gabriel Hughes, some \$300 or \$400; bought some from a man by the name of Hale, some \$3,000 or \$4,000.

Q. What Hale was that?

A. A gentleman living near Guntersville; I don't know his given name; he is dead now. Bought some from the Roden estate; they live across the river, on the north side; I don't remember how much; somewhere in the neighborhood of \$1,000, I reckon. I can not think of one half of them or one fourth right now.

Q. These are all you think of that constitute the 1,200 shares?

A. Yes; I bought some from Joseph Bevins, some \$200 or \$300, and some from Sam Henry, about \$500 or \$600. There was quite a number of them; I can not think of all of them.

Q. You say you paid from fifty cents to the dollar on them?

A. Yes.

Q. When did you first commence to buy that stock?

A. In 1860.

Q. When did you quit buying on the 1,200 shares?

A. I kept buying until just before I turned the balance of the stock over to Mr. Thomas.

Q. You were buying this stock all the time, and no hope of building and no hope of paying your debt?

A. I knew the road was good for it; I did not want to buy the land in the first place.

Q. When the Tennessee & Coosa sold out to the East Alabama
284 & Cincinnati, you say the East Alabama & Cincinnati agreed to pay the floating debt of the company, and estimated it at \$25,000, and that included your debt and all the other debts of the company, and they did not owe anything except what they owed to you and Lewis?

A. Yes.

Q. You say all of your indebtedness was for the construction of the road?

A. Yes, and for furnishing locomotives and cars.

Q. I am talking about the old debt, the \$32,326.76 which I have before mentioned; they did didn't owe you for anything else?

A. No, sir.

Q. Not for service, nor for goods sold?

A. Yes, they owed me for a good deal I did for them in Washington and Montgomery. I mean time of mine that was used there. I was in Washington several times; about three or four months altogether.

Q. Did you ever make out a bill for that?

A. Yes; it was about three thousand dollars.

Q. For two or three months work; for your own personal services?

A. Yes.

Q. You never did get that?

A. I never presented it. That is not a part of this indebtedness.

Q. How long were you in Montgomery?

A. All during the session of the legislature,

(Objected to by counsel for Mr. Carlisle, because it is not included in any statement rendered against the Tennessee & Coosa Railroad Company, and it is wholly immaterial and irrelevant.)

Q. Did you ever present your bill for the Montgomery work?

A. No.

Q. Did you ever claim anything for it?

A. Yes.

Q. How much?

A. I think some two thousand dollars.

285 Q. Is any of this sum of \$32,326.76, as shown by the statement of Reyburn, part of your services at Montgomery or at Washington?

A. No; I never presented it.

Q. This indebtedness represents work done on the road, and that alone?

A. Yes.

Q. I see an item on your account, \$300, paid Boyd to go to Washington; that was before they had turned the road over to you. How come you to pay that?

A. The company had no money; the company asked me to let Boyd go to Washington.

Q. Is any minute made of that?

A. Yes.

Q. Where is it?

A. It is on the lost minute book.

Q. I see you paid a good many attorneys' fees along here; some to Reese, to Denson & Desque. Is that for services rendered to the Tennessee and Coosa Railroad?

A. Yes, sir.

Q. I see an item, \$2,500, paid W. H. Denson. What litigation was that for?

A. That long litigation against the East Alabama and Cincinnati Railroad?

Q. What sort of a suit was that?

A. A suit in ejectment. I got a judgment.

Q. How much damages did you collect on that?

A. Three thousand dollars.

Q. Didn't you get about \$20,000?

A. No.

Q. Who paid it to you?

A. Major Semple, of Montgomery. He paid it to Denson and Rice. I never received a nickel of it. That was part of the fee paid to Denson, Disque and Rice at Gadsden.

Q. Did you collect anything at all from the East Alabama and Cincinnati?

A. Not a nickel of any kind and description.

Q. I see here is an item of \$2,759.11 in your account against
286 the Tennessee and Coosa to the amount of sundry bills, as shown by invoice book. Where is that book?

A. I got it, I reckon. It is in evidence, marked Exhibit F.

(Witness is here shown book and asked to show bill making up that item.)

A. I can not do it; the bookkeeper could. The company approved it.

Q. I see an item, amount paid employes wages on the Gadsden branch of the Tennessee and Coosa Railroad, \$1,879.73. Can you look at your book or books and give me the items that form this charge?

A. I don't think I could.

Q. I see an item in your account against the Tennessee and Coosa Railroad, amount paid employes wages on the extension of the Tennessee and Coosa Railroad, \$4,081.32. Can you look at the books and show the items that constitute that?

A. The timekeeper kept the time, and the bookkeeper presented it to the company, and they approved it.

Q. What sort of work was that for?

A. For shoveling dirt, getting out cross-ties, building bridges, laying track, etc.

Q. You constructed the road and put it in operation from Attalla to Littleton, and built the bridges from Littleton to the top of the mountain?

A. Yes; it was built partly before the war; wasn't graded in full.

Q. Then the certificate that the company made to the Government when they drew the last \$250,000 was not true?

A. No; it had been graded and slid afterwards.

Q. There are not many cuts between Littleton and Attalla?

A. Yes; there are several—a bad one at Littleton. I had two men buried up at that slide; that occurred while we were at work.

Q. You simply cut down the timber—the young growth that had grown on the bed—and laid the green pine poles or ties on the surface?

287 A. I surfaced the road and put it in good shape. I finished up the grading where the cuts had slid down.

Q. Who was the engineer of the East Alabama & Cincinnati at the time that you took charge of it?

A. I don't remember who was the engineer. I think Hardaway was one of the engineers; don't know his given name.

Q. Did the East Alabama & Cincinnati do any work between Attalla and Littleton?

A. They built a trestle there, and it rotted down, and I had to put in a new one. They done a little work on this end of the mountain.

Q. What engineer took charge when you turned it over to the Nashville, Chattanooga & St. Louis?

A. I think a man by the name of J. A. Richardson.

Q. Where does he live?

A. At Attalla. Branch was the former engineer; I don't know where he is now. Richardson took his place.

Q. Do you know a man by the name of Case, an engineer?

A. He was Quintard's engineer. I turned the road over to him; I don't know where he is; he was an Eastern man.

Q. You say you put down very few pine poles. Were they much account?

A. I paid a high price for them to Hughes Brothers; they are not good ties; they won't last more than two or three years.

Q. You say you bought an engine. Who did you buy that from?

A. I bought it from a gentleman—I forget his name now—in Birmingham.

Q. What road was he connected with?

A. He was connected with a locomotive works. It was a second-hand engine.

Q. Do you remember what you paid for it?

A. Twelve hundred dollars.

Q. Isn't it a fact that until the Nashville, Chattanooga & St. Louis took hold of this road there was no running of trains to Attalla and Littleton, except to haul some rock on the Gadsden branch?

A. They were running all the time, hauling passengers and freight; we ran one train every day; run all through 1886-87 and part of 1888; I ran two engines; had two trains, freight and passenger; we used to pull the freight with the passengers; we had a passenger coach and a freight car.

Q. And you were operating the road from Gadsden out to Littleton?

A. Yes.

Q. And you charge in this account the expenses of operating the road?

A. Yes.

Q. I see here, cash paid Woodward, Wright & Co., New Orleans, for twenty-five carloads of rails, fastenings, and spikes, crowbars, and one hand car, \$10,248.92; was that for rails that were laid on the road from Attalla to Littleton?

A. Yes, sir.

Q. Were they new rails?

A. They had been used a little, down at the exposition at New Orleans; they were light rails; they were used by the Nashville, Chattanooga & St. Louis for a while.

Q. I see in your account an item against the Tennessee & Coosa paid for sundry bills 1886, \$7,913.41; was that for labor and operating expenses?

A. That might have been sundry bills that I purchased.

Q. Can you refer to any books that we have and show us these items?

A. The time books will show it.

Q. Where are they?

A. They are here, I think. It is for bills outside of the time book. That big book will show it—I mean the invoice book.

Q. Can you turn to the invoice book and show me the items that compose it?

A. No, sir, I can't.

Q. I see an item here, cash paid employes wages on the Gadsden branch, \$4,757.86. What is that for?

A. That is for operating expenses.

Q. Item, cash paid employes, \$6,654.36?

A. For construction work, from Attalla.

289 Q. You charge 20 per cent on the whole of this, on the operating expenses and everything else?

A. Yes.

Q. I see an item of paid State and county taxes for 1887, \$1,018.53?

A. That was for taxes on the road, not for taxes on the land.

Q. I see an item, December 31, 1887, of \$16,446.60, cash paid sundry bills for 1887. What were they?

A. You will find them in the invoice book. I can't point them out; they were for construction and operation both.

Q. You had finished the road out there before December, 1887?

A. Yes. I think we commenced operating in the fall of 1886. Perhaps it was 1887 before we started.

Q. I see an item, December 31, 1887, branch of the Tennessee & Coosa Railroad Company, \$7,302.41. What was that for?

A. For putting in new steel rails, repairing bridges, fixing up the track, and running the road. I put in a lot of steel rails on the road between Gadsden and Attalla. When I took hold of the road between Gadsden and Attalla, the ties and bridges were all rotten.

Q. I see an item, cash paid employees, \$6,252.24, dated December 21, 1887. Hadn't the road already been completed up to that time?

A. That was for work done on the bridges beyond Littleton.

Q. I see an item, cash paid to Sam Noble, \$2,000; how about that?

A. I gave the company credit for it; Noble gave me \$2,500 for the right of way between Gadsden and Attalla for his track.

Q. How is it that you are charging the Tennessee & Coosa with it?

A. I have given them credit for it again; you will find there.

Q. You charged the company with \$2,500, received from Noble;
290 then you credit the company with \$2,500 for the right of way;
that simply balances the account; whereas, in fact, you received \$2,500 from Noble in money?

A. Yes.

Q. Then the company ought to have a credit of \$2,500, instead of just having it canceled one with the other?

A.

Q. Wasn't the company entitled to a credit for it?

A.

Q. Didn't the company's property pay for that \$2,500?

A. Yes.

Q. Then it ought to stand as a debt against you?

A. It is the company that sold it to him.

Q. And you got the money?

A. Yes.

Q. Then you got \$2,500 of the company's money that you have never accounted for?

A. I gave the company credit for it.

Q. Didn't you get the money?

A. I don't see how I got the money; he bought it from the company.

Q. You call that good bookkeeping?

A. I don't know.

Q. If I get \$2,500 of your money and credit you with it, and then charge you with it, and never give you the \$2,500, it would be like I owed you \$2,500, wouldn't it?

A. Didn't I give the company credit for it again?

Q. Can you give any other explanation than that which you have already given?

A. No; the company's bookkeeper can do it.

Q. When did the company approve the accounts?

A. On the 2nd of April, 1888.

Q. In what book is that shown?

A. In that account.

Q. There is no resolution of the board, or anything of that kind, is there?

A. There was a resolution appointing a committee to look into that account. This resolution is on the minute book that is lost.

291 Q. This item of 17,410 acres of land is not entered until 1888; how was it that you did not credit the company with this land, bought in the quitclaim deed, until 1888, when the deed was made in 1887?

A. I did credit them.

Q. Why was it that you did not credit them in 1887, when you got the land?

A. That was the time we settled, you know.

Q. With whom?

A. The Tennessee & Coosa Railroad Company, when I sent that account over with the company's bookkeeper.

The session of the examiner here adjourned until 11 o'clock a. m. Wednesday, September 19, 1894.

MORNING SESSION.

SEPTEMBER 19, 1894—11 o'clock a. m.

Q. You say in your direct examination, on page 18, that at the time the conditional sale was made by the Tennessee & Coosa Railroad to the East Alabama & Cincinnati Railroad, the floating debt they owed you for building the road at that time was \$50,000, principal and interest; now, what means have you of knowing that your indebtedness was \$50,000?

A. By the statements from the company from time to time.

Q. When were these statements rendered?

A. The day that Mr. Rayburn stated there.

A. You mean this statement of December 31, 1885, wherein the indebtedness is \$32,326.76?

A. Yes, sir.

Q. Now was it \$32,326.76, or was it \$50,000?

A. The interest would make it in the neighborhood of \$50,000.

Q. On page 4 of your former examination you stated at that time, meaning April 12, 1888, the company owed you for work done before the war about \$40,000.

A. This was just an approximate. The trouble was, that I could not get the company to do anything with my account, and the account was open all the time.

292 Q. Did they give you the full amount they owed you—the \$32,326.76—or did they owe you more than that?

A. They owed me more than that; with the interest added, would make it about \$50,000.

Q. What was the principal of the debt they owed you before the war, of your own knowledge, outside of what they said about it?

A. I got their statements.

Q. Do you not know, of your own knowledge, what they owed you?

A. No, sir; nor any other contractor.

Q. You say, then, you have no idea of the work done prior to and including 1861?

A.

Q. Did you ever get a final estimate?

A. Yes, on one or two sections.

Q. Could you tell, from these estimates, what they owed you?

A. Yes; I think they owed me more than Mr. Rayburn fixed up.

Q. About how much?

A. I don't know how much it would amount to; a few thousand dollars more. I was willing to take whatever they offered me.

Q. How much did you claim?

A. I did not make any claim; I just took what they gave me. I did not claim anything. My judgment is that they owed me a little more than what they said; I think, in my judgment, they owed me \$35,000.

Q. On that same page, 4, you state that they owed you, in all, \$111,000, not deducting the lands. Was that correct?

A. I don't know whether it is or not; I suppose it is. I will make the same answer to that now.

Q. Hadn't the work on the road, the construction work, stopped in July, 1861, as shown by the report of the president, marked Exhibit P?

A. My memory is I did work after July.

293 Q. Do you know that report, Exhibit P, is in Mr. Rayburn's handwriting?

A. Yes.

Q. Are the facts stated therein, as follows: "Your board deem it prudent, though with great reluctance, to suspend work," and that a meeting of the board was held in July, and resolution was passed to suspend work and to pay up the contractors, true?

A. Yes.

Q. Then it is a fact that the work of construction was suspended in July, 1861?

A. There was a resolution, as Mr. Rayburn says, to that effect, but my opinion is there was work done after that.

Q. Have you any recollection of that, outside of your time books?

A. None; my time books will show that.

Q. Did you not work on sections 10, 11, 12, 13, 16, 17, 18, 19, and 21 before the war on the road?

A. Yes.

Q. Where did they commence to number the sections from, the Gadsden end or this end?

A. I don't remember; it is so long now I can't tell. I don't know how many sections there were on the road. I don't know whether they commenced to number the sections from Guntersville.

Q. Isn't it a fact that the estimates of the engineer for work done were closed on August 10, 1861, and brought up so as to include all the work done up to August 1, 1861?

A. I could not say; I don't know.

Q. Isn't it a fact that you had gotten final estimates on all of your sections prior to August 10, 1861, except sections 10, 11, 12, 13, and 16?

A. I know there were several sections that I got final estimates on, but could not tell you what sections they were; my memory is imperfect on that.

Q. Don't the figures set out in Exhibit D to the testimony of Mark Johnson, dated August 10, 1861, showing amount due you on section 16 of \$5,655.41, and on sections 10, 11, 12, and 13, amounting to 294 \$3,849.30, represent all that the company owed you at that time for construction work, except probably some extra work?

A. I presume it is.

Q. How much did your account for extra work amount to?

A. I don't remember.

Q. Well, about how much?

A. I can't say. Sometimes the extra work outside of the contract was as much as the contract itself.

Q. Well, isn't it a fact that these two items referred to in the last interrogatory, together with \$300 for building culvert, hauling and filling broken embankment on section 3, and \$250 for labor of men and mules, piling and removing bridge timbers at Guntersville, and \$400 expenses to Montgomery, cover the entire indebtedness which the road owed you for work done, up to and including the year of 1861?

A. No, I think not. I think it is much more than that. The figures above referred to show only on those sections named.

Q. Hadn't you been fully paid for all the other sections?

A. No, sir; I think there is only two or three sections where I got a final estimate.

Q. Wasn't \$11,467.16 the full amount of the indebtedness of the Tennessee & Coosa for work done prior to and including the year 1861 in constructing the Tennessee & Coosa Railroad?

A. Considerably more than that.

Q. How much more?

A. I can't tell; I did not know what they would give me; I expect it is as much as \$35,000.

Q. You talked about the board renewing your debt from time to time after the war; wasn't the amount ever ascertained during that time?

A. No, they never figured it out; not until Mr. Rayburn figured it out in that account, as Mr. Johnson told me.

Q. Didn't the board of directors of the Tennessee & Coosa and you figure up the amount during these times when you talked about reviving the debt, or some other time, and didn't they ascertain the debt to be \$11,467.16?

295 A. I was no witness to see them making any figures on it; the time they revived it there was no definite amount stated.

Q. Wasn't a statement made between you and the board of directors after the war, and was the amount fixed at the sum just mentioned?

A. I don't know; I was a member of the board all the time, but was not present all the time; it certainly was not fixed when I was present.

Q. Was anything paid you after this estimate shown on Exhibit D to Johnson's deposition, of date August, 1861, before the war closed?

A. I don't remember; I think they were out of funds; they did not have any money.

Q. I think you stated you bought a lot of stock from people, and it was all paid up; are you sure now that it was all paid up?

A. Yes.

Q. Did you buy any stock from a man by the name of John Noble?

A. I don't remember.

Q. Do you remember such a man as John Noble?

A. I have heard his name, don't know him.

Q. Don't you know that you bought a lot of stock from him that was assessable, and that there was a balance due on it for \$500?

A. I don't remember. My opinion is that it was all paid.

Q. Didn't you buy a lot of stock from a man named William Jones, about \$1,000?

A. I don't know William Jones. I don't remember him now.

Q. Didn't you buy from him stock that was assessable, about \$600 due on it?

A. I don't remember him at all.

Q. Did you buy any stock from a man by the name of Bush?

A. My mind is not clear on that; I think there were several men by that name; I don't know whether that stock was paid up or not. I don't remember that I bought any stock from him.

296 Q. Didn't you buy stock of the par value of \$700 from James Smith?

A. Don't know James Smith; never saw him to my knowledge.

Q. Did you buy any stock from Jacob McCane?

A. I don't remember whether I did or not.

Q. Where were you doing the year 1861 and 1862?

A. I was in Jackson County, Alabama.

Q. Didn't you make a collection on this claim in September, 1861?

A. I don't remember.

Q. Didn't you collect one thousand dollars in 1862?

A. I don't remember.

Q. Didn't you collect one thousand dollars in Huntsville or Gadsden on it?

A. Don't have any recollection of it.

Q. Do you know a man by the name of Major Weeks? What connection did he have with the road?

A. He was one of the directors. He was collector—collected the stock for the company.

Q. Do you know whether you gave him an order on the company for one hundred dollars?

A. I don't remember.

Q. Now, in your former examination you stated that Judge Wyeth put in somebody's safe eleven bonds of one thousand dollars each as security for you?

A. Yes.

Q. When was that done?

A. Soon after the war.

Q. Where did he put them?

A. In Judge Manning's safe, he told me.

Q. If they owed you a debt of \$35,000, why was it that Judge Wyeth, who was your father-in-law, did not lay aside enough bonds to secure your entire debt?

A. I suppose he wanted to secure me that amount.

Q. Don't you know that the directors got together after the war and ascertained your debt to be \$11,000, and set apart to you these bonds to secure it?

297 A. I don't know that.

Q. Do you know that it is not true?

A. I don't know; it did not occur when I was present.

Q. Where is the stock book of the company? Did they have a stock book from which the shares of the company were taken?

A. Yes.

Q. Where is that stock book?

A. I don't know where it is now.

Q. When did you see it last?

A. I saw it at Guntersville, in April, 1888.

Q. Have you not seen it since?

A. No.

Q. Didn't you get that book when you got the other books?

A. No.

Q. That book had stubs in it, showing to whom the stock was issued, and the amount issued?

A. Yes, sir.

Q. Have you paid any taxes on these lands—that is, on the 17,410 acres of land which you claim you have bought from the Tennessee & Coosa Railroad at \$1.25 an acre, and on the 23,339.51 acres of land which you claim to have bought from the Tennessee & Coosa at \$2.50 per acre.

A. Yes, sir.

Q. In what counties?

A. In Etowah, Marshall, and Blount.

Q. You mean State and county taxes?

A. Yes.

Q. For what years?

A. I think for some four or five years before this bill was filed, and before the receiver took charge of the lands.

Q. Do you mean for the four or five years immediately preceding the appointment of the receiver in this case?

A. Yes, sir; I never paid anything before that.

Q. How much did you pay out in taxes?

A. I have got the receipts; that account of mine will show it.

298 Q. You say you put a locomotive and some cars on this road, after you took charge of it, between Gadsden and Littleton; were there not already one or more engines and some cars there, which you got from the East Alabama & Cincinnati in the lawsuit?

A. Yes, sir; there was one there; I bought one engine and one passenger car outside of that.

Q. Was any part of this road from Gadsden to Guntersville completed on June 3, 1866?

A. None of it completed in that time.

Q. None of it was completed until some time in 1871 or 1872?

A. In 1871.

Q. Now, the Manhattan Trust Company had a mortgage on the road as trustee; well, that company reconveyed, didn't it, to the Tennessee & Coosa?

A. I don't know.

(Question and answer objected to by counsel for Mr. Carlisle because the conveyance would be the best evidence.)

Q. Was the first mortgage security, 400 bonds of \$1,000 each, given in 1861? What was done with them?

A. They were canceled after I bought the land; they were not canceled before; I bought the land in April and they were canceled in October.

Q. These bonds were issued after the war commenced?

A. No, sir; before the war. They were issued in November, 1860.

Q. Isn't it a fact that that mortgage securing these 400 bonds was not made until 1861?

A. The mortgage was made in November, 1860.

Q. You realized in 1870 that these lands had been forfeited?

A. No, sir.

Q. Didn't you go on to Washington to get the grant renewed in 1870?

A. Yes, sir; later than that.

Q. Didn't you go on about that time to get an act of Congress passed to extend the time of that grant?

299 A. Not at that time. I went on afterwards, about 1890, for that purpose.

Q. Were you a director in the road continuously from the time you were elected in 1860 or 1861 up to the time when you bought the 27,779.51 acres of land?

A. Yes.

Q. Were you a director all the time up to the time you bought the 17,410 acres of land?

A. Yes, sir.

Q. What were the lands worth when you say you bought them?

A. They were not worth what I paid for them.

Q. Don't you know that the lands were at that time worth more than \$5 per acre?

A. No, sir.

Q. When did you buy Lewis' claim?

A. Since the war.

Q. About what time?

A. My account will show there; the account shows in 1883.

Q. In your direct examination, on page 13, speaking of the engineer's estimate book, Exhibit C to your deposition, you say that your wife found that among some of the papers of Judge Wyeth; did she get any other papers?

A. I don't remember any others.

Q. Did you ever recall that reward that you offered for the lost book?

A. I never recalled that reward; it is still standing.

(Witness is here handed a book by counsel for the Government, and asked whether that is the book that was lost.)

Q. That book now presented to you, marked Exhibit S, is the minute book which you lost, is it not, between Parkersburg and Washington?

A. That is one of the minute books of the Tennessee & Coosa Railroad; there is another one; this commences in 1854 and ends in 1872. It was my opinion that there was only one, but I now see that there were two.

Q. I will have you to examine page 206 of this book and see
300 if your account is not stated there, and the balance shown to be due you of \$11,467.16; examine pages 205, 206, and 207.

A. Yes, sir; this is the first time I ever saw it; the first time I ever saw the book itself; there must be two minute books; the records of the company from 1872 up to 1888 and 1889 are not there.

Q. A great deal of this book is in the handwriting of Mr. Rayburn, as secretary?

A. Yes.

Q. Do you say that the several occurrences, meetings of the board and other things in this book, were not known to you before?

A. Yes, sir; they were not known.

Q. This particular meeting of the board, which constitutes your account, on pages 206 and 207, is in the handwriting of Mr. R. K. Boyd?

A. I think it is.

Q. Look at it and see.

A. Yes, sir; I think it is; I wouldn't be certain, though.

Q. I see on page 178 of this book, Exhibit S, that on motion of G. H. Henderson, it was unanimously resolved by the board of directors to suspend work on the Tennessee & Coosa Railroad for the present, owing to the financial condition of the company and the present disturbant state of the country; that bears the same date of the report marked Exhibit P; will you look at that entry and see whether or not that entry was made in that book in connection with this, if you have any recollection of it?

A. I don't know whose handwriting that resolution is in.

Q. Here is November 22, 1862, where an election was held; that is in the handwriting of Mr. Rayburn, is it not?

A. I don't know whose handwriting it is in.

Q. Here, now, is a meeting of the stockholders in 1863; whose handwriting is that in?

A. I don't know.

Q. Here is a copy of a contract entered into between the Tennessee & Coosa Railroad and Hon. P. C. Wright, of New York City, who is now ready and offers to complete the road, etc., etc. Do you remember anything of him?

301 A. I don't remember.

Q. Was J. H. Armes still your chief engineer after the war?

A. No, sir.

Q. Here in 1866 the board met again; have you any recollection of this meeting on page 190, September 26, 1866? Whose handwriting is that?

A. I don't know.

Q. Do you know whose handwriting that is on page 195 and page 196?

A. No, I don't know; I can't tell whether it is Rayburn's handwriting.

Q. Do you know anything of these occurrences appearing on page 198?

A. I don't remember them.

Q. Is that the signature there of R. K. Boyd, on page 199?

A. I don't know whether it is or not.

Q. Do you know whether that is Mr. Rayburn's handwriting on pages 201 and 202, and whether that is his signature or not signed as secretary pro tem?

A. I don't know.

Q. Do you know whether the signature to the minutes on page 204 is the signature of R. K. Boyd?

A. I don't know.

Q. Do you know whether the signature on page 207 is the signature of R. K. Boyd?

A. I don't know.

Q. Do you know anything about this resolution that was passed as stated on page 212?

A. I don't remember.

Q. Do you know anything about the facts recited on pages 213 and 214 of the book of Exhibit S?

A. I don't remember this resolution.

Q. Do you know whether that is the signature of R. K. Boyd as secretary?

A. I do not.

At 1.30 o'clock p. m. the session of the examiner adjourned, to meet again at 3 o'clock p. m.

302

AFTERNOON SESSION.

3 o'clock p. m.

Witness H. Carlisle here desires to make a statement as follows: I make this statement: I find out, after looking over the book Exhibit S that it is one of the company's minute books, and that the signatures of Boyd and Rayburn are correct.

Q. Well, then, Exhibit S is the genuine minute book of the Tennessee & Coosa Railroad Company?

A. Yes, sir; I think it is.

Q. Have you examined the minutes of the board from pages 205 to 207, covering the minutes of December 20, 1869, with reference to your account?

A. Yes, sir; I glanced over it.

Q. Well, does that represent the facts that occurred at that time?

A. I was thinking it ought to be more than that.

Q. Are not the facts stated in said meeting of December 20, 1869, on pages 205 and 207 of Exhibit S, true? State the facts which occurred at that time?

A. I don't recollect anything about it. I don't remember of being there.

Q. You were a member of the board of directors, were you not?

A. I became a member of the board in the fall of 1866. I think I was a member at that time. I was a member in 1869.

Q. You say you have no recollection now of being present at this meeting of the board, though you are stated to be present by the secretary, and you have no recollection whatever that any of this action was taken on your account?

A. None.

Q. I see here that a committee to whom your account was referred made a report on that day that the company was due you \$11,476.16, and I see that this was unanimously adopted. Do you remember voting for that?

A. I don't remember about that action being taken at that time.

303 Q. You stated on yesterday that in the minute book of the Tennessee & Coosa Railroad your account had been from time to time revived; now, having the minute book before you, can you show any place where it was revived?

A. It is in the one that was lost.

Q. You don't find anything in this book, Exhibit S, where it has been revived?

A. I have not noticed it close enough to say.

Q. I see from the estimate book marked Exhibit D to Mark Johnson's testimony, on the next to the last page upon which there is any writing, dated August 10, 1861, that you are credited with \$5,655.41 for work done on section 16, being estimate No. 15. Now, I see on the minute book, Exhibit S, that you are credited with precisely the same sum on estimate No. 15 of section 16 of the work; doesn't that show the correct amount due from the company to you on that section at that time?

A. Well, that was the company's view of it; I don't know whether it is correct or not. I think there are credits due more than that.

Q. Now, I see on the same book, Exhibit D to Mark Johnson's testimony, on estimate No. 11, section Nos. 10, 11, 12, and 13, that you are credited with \$3,849.30; and on the minute book, Exhibit S, I see you are credited with exactly the same sum; isn't that the correct amount for all the work you done on those sections?

A. I think they failed to give me the full amount that I am entitled to; I have been taking their own testimony for it; I don't know that it is incorrect.

Q. Then I see an item of \$300 on the minute book, Exhibit S, for bridging culvert, hauling and filling broken embankment on section 3; is that item correct?

A. I suppose it is.

Q. I find another item to labor of men and mules, piling and saving bridge timber at Guntersville; is that item correct?

A. I expect it is.

Q. I see, then, an item of \$400 for expenses incurred by Hugh Carlisle in going to Montgomery; is that correct?

A. I presume it is.

304 Q. Isn't it a fact that at that time, on December 20, 1869, these were the only items due you by the Tennessee & Coosa Railroad?

A. No; I think they owed me more than that; I don't think they have given me all the credits there; there is a credit of three thousand dollars that they haven't given me, for going to Washington.

Q. What other credits?

A. Credit for going to Montgomery.

Q. Well, you have got that; what other credits?

A. Mr. Rayburn—he made out the statements.

Q. Tell us, of your own knowledge, what you are entitled to that you haven't got? What you remember?

A. I cannot call them to mind now.

Q. In your examination on yesterday, before you saw this minute book, you then said that you never claimed the three thousand dollars for going to Washington?

A. That has been done since that. I went to Washington the second time.

Q. Didn't you state that the \$32,326.76 was for the construction of the road and for nothing else?

A. I may have stated that; if I did, it is not correct. I think I went twice to Washington; the last time was way in 1889; I was there a couple of months.

Q. If it was done in 1889, it could not have been in Rayburn's statement, which was made before 1889?

A. I don't know whether it was or not.

Q. Didn't you state positively yesterday that there was? Didn't you?

A. That was my impression then; I suppose I did.

Q. You say that is not the book which you lost?

A. Yes.

Q. You thought there was only one?

A. Yes.

Q. And when you were testifying yesterday you thought all the facts were in that book and that that book was lost?

A. Yes.

305 Q. I see you are charged here in this account in exhibit S with the following payment: September 6, 1861, \$450; is that correct?

A. I don't know whether it is or not; I won't say it is not.

Q. Then, March 6, 1862, cash at Guntersville, \$2,000.

A. I don't remember about getting that money either; I don't have any recollection of it; I won't say it is not true.

Q. Order of Major Wiggs, \$100?

A. I don't know whether that is correct or not; I won't deny it.

Q. If this account, as stated in exhibit S, showing a balance of \$11,467.16, is correct, then you are wrong when you state there was \$32,326.76 due you?

A. There are credits to go on it; you see that \$3,000 that I spent in Washington ought to be on it.

Q. What was that money spent for?

A. Attending to the company's business, trying to save the property. I spent it in hotel bills, employing counsel, printing, etc.

Q. What counsel did you employ?

A. Stringfellow; I paid him \$200. The balance I paid in printing, hotel bills, and my time.

Q. How much did you charge for your time?

A. Altogether the bill was \$3,000.

Q. How much per day, week, or month did you charge?

A. I was there several months—I don't remember how long. I don't remember how much estimate I put on my services.

Q. As much as \$5 per day?

A. More than that.

Q. About how much?

A. The whole bill was \$3,000.

Q. I am talking of the one in exhibit S. I want to know how that was spent.

A. I done a great deal of work there. I tried to have the land grant revived to the road.

Q. Did you do anything but that? Did you spend any money?

306 A. Yes; going there and coming from there; hotel bills for several months, and other things.

Q. You did not succeed in having the grant revived?

A. No, sir.

Q. And all the account you can give of the expenditures is for hotel bills and traveling expenses from here to Washington and return?

A. Yes, sir.

Q. You did not use any in any other way?

A. Not a nickel.

Q. I see in the minutes, as shown on page 207 of exhibit S, that the president of the company was authorized and directed to issue a certificate of indebtedness to you for the sum of \$11,467.16. Where is that certificate?

A. I think it is among my papers; I think I can find it.

Q. When did you see it last?

A. I don't remember how long it is.

Q. Did you see it since you have been in Birmingham this trip?

A. No.

Q. Did you see it when you were being examined before?

A. Before that.

Q. About how long ago?

A. Several years ago since I saw it.

Q. Where was it when you saw it?

A. Among my papers; I kept them in government caisson; I still have them in there.

Q. Why haven't you produced that certificate on your examination?

A. I didn't think it was necessary to show the indebtedness of the company under the seal of the company signed by the president. I expect I could find that certificate now at home.

Q. Well, I will ask you to do so.

Q. And you claim now in this suit and swear that the company owed you \$32,326.76 when you had this certificate of indebtedness for \$11,467.16 in your possession?

307 (Objected to by counsel for Mr. Carlisle because it is argumentative.)

A. Yes, I did not remember anything about the certificate at that time. I just took from time to time what Mr. Rayburn fixed up for me, and took his statements of the indebtedness to me. Mr. Rayburn made that statement to Mr. Johnson and myself. Mr. Rayburn told me that he made the statement.

Q. You say you do not know anything about this account?

Q. Do you say now it is \$35,000 after seeing this book, Exhibit S, for work done up to and including the year 1861?

A. No; I made my calculation altogether from what the company said they owed me. Mr. Rayburn made that statement.

Q. I will ask you to produce that statement in Mr. Rayburn's handwriting before the examination closes.

A. I think I have got it.

Q. Now, after looking over this minute book S, how much do you say the Tennessee & Coosa owed you for construction up to and including the year 1861?

A. That book shows they owed me \$11,467.16; I don't know how much more.

Q. Do you know of any more?

A. Yes, I think there are more credits that I am entitled to; I think there is more than is included in that estimate.

Q. Then the minute books lie? Do you say you were not present?

A. I may have been present and may not.

Q. But now, since seeing the account as shown by the book, isn't it a fact that the company only owed you, at that time, \$11,467.16?

A. That is the way that book shows. I think they owed me more money.

Q. Rayburn is dead now?

A. Yes.

Q. I see charged to your account in Exhibit S \$500 on stock of John Noble. Is that a correct charge?

A. I don't know; I don't remember.

Q. I see that there is a charge of \$250 against you on stock of P. M. Bush; is that correct?

308 A. I don't know.

Q. I see that there is \$75 due on the stock of Jacob McCaine. Is that correct?

A. I don't remember.

Q. Do you say now, after seeing this book, Exhibit S, and your account therein, that the Tennessee & Coosa Railroad Company owed you as much as \$35,000 for work done before the war, including the year 1861?

A. If that book is correct, I overestimated the amount they owed me. I have been governed by Rayburn's statement.

Q. I want you to say if this statement is correct or incorrect.

A. One of the accounts are wrong, either Mr. Rayburn's or this book. I will swear most positively that Rayburn gave me the statement in his own handwriting.

(Counsel for the Government: I will give you every opportunity to

produce that statement; I will hold the examination open for you to produce it.)

Q. Where is Mr. Barclay, the former secretary of the company?

A. He is dead.

Q. On page 170 of Exhibit S, I see that your board memorialized the Congress of the Confederate States of America to pass a law authorizing the relinquishment of all tariff duties on iron rails, etc. Do you remember anything about that?

A. That is the first time I have heard of it.

Q. I see on page 199 of Exhibit S, that on May 3, 1869, a committee of the board of directors of the Tennessee & Coosa Railroad, consisting of G. Greenwood, M. Gilbreath, and William H. Wiggs were appointed to ascertain what amount was due to H. Carlisle and Carlisle & Henderson; were you present when that resolution was passed?

A. I don't think I was. I have no memory of it.

Q. I see that has reference to an account of Carlisle & Henderson?

A. Mr. Henderson assigned all his interest over to me.

309 Q. Was that all embraced in your account?

A. Yes, sir.

Q. Wasn't it embraced in the amount shown here in Exhibit S, on pages 205 to 207? That is the Carlisle & Henderson account.

A. No; I think it is embraced in Mr. Rayburn's account.

Q. So, when you stated yesterday that Carlisle & Henderson had no interest—that it all belongs to you—it is a fact that you were mistaken?

A. Yes.

Q. So, then, you claim now that Henderson & Carlisle had an account?

A. Yes, sir; I was mistaken when I said yesterday that Henderson & Carlisle had no account.

Q. Henderson, as I understand it, claimed an interest in the account?

A. Yes; but I denied it, but gave him an interest in the contract, notwithstanding. I paid him all the profits that were realized; I paid him in property; I think I gave him a house and lot in Forsyth, Ga.; I gave it to him for his interest.

Q. From the time you commenced work, in 1859, up to the time you quit work, in August, 1861, Henderson wasn't about it?

A. Henderson was in Scotland. He remained there nearly all the time, and came back just before the war started.

Q. Do you claim now that there was no account of Carlisle & Henderson which was not embraced in the settlement of the board on pages 206 and 207, Exhibit S?

A. Mr. Rayburn knew all about that. I think there was a verbal understanding that Mr. Henderson made with him about that?

Q. Can you show any paper, or any book, or any estimate, that indicates anything of that kind?

A. I might look over the books and see.

Q. I will give you an opportunity before this examination closes to produce any books or estimate to show that Carlisle and Henderson done any work that you speak of?

A. I have no knowledge on the subject, that is just what I think.

310 Q. I see on page 221 of Exhibit S, of date June 27, 1871, a proposition to the effect that the East Alabama & Cincinnati Rail-

road Company will purchase the Tennessee & Coosa Railroad, and as a part of the consideration will pay off and discharge the floating debt of the Tennessee & Coosa Railroad, not to exceed in amount the sum of \$25,000, one-fourth in money and the remainder in first mortgage bonds of said company, endorsed by the State of Alabama, numbering from 320 and upwards. Were you present when that matter was up for consideration before the board?

A. Yes, sir; I was opposed to it, and afterwards consented to it.

Q. While the floating debt of the company was stated to be not to exceed \$25,000, didn't that include your account and all other debts of the company?

A. Yes, sir.

Q. How many of these bonds of the East Alabama and Cincinnati Railroad did you receive?

A. Not one.

Q. I see here on page 215 of Exhibit S that the sum of \$3,000 is allowed you for expenses incurred in the city of Montgomery during the year 1870. What was that for?

A. It was for endeavoring to get the State of Alabama to release our indebtedness that we owed on the two and three per cent fund. I went before the committees of the legislature.

Q. How long were you there?

A. All the session.

Q. They begin in the fall; same length of session that we have now?

A. I don't remember; somewhere about three months.

Q. How did you spend that money?

A. In traveling there, board, and my time; they allowed me that for it. I did not spend any of it any other way but that.

Q. I see, on page 212 of Exhibit S, that you were sent to Washington to obtain from Congress a renewal of grant of land to the company, made July 3, 1856. Did you go to Washington on that errand?

A. I think I did at that time.

311 Q. That was for the lands now in controversy, was it not?

A. Yes, sir.

Q. In that minute book which you say was lost, was there not a resolution passed by the board of directors of the Tennessee & Coosa Railroad Company in words as follows: "In consideration of the delivery to the Tennessee & Coosa Railroad Company by Hugh Carlisle of all the capital stock owned by him, together with all claim upon the lands of this company, and its property in all and every particular in full, the Tennessee & Coosa Railroad agrees to pay to Hugh Carlisle one hundred thousand dollars in the first mortgage bonds of the company, as soon as they can be gotten ready for issue, and five thousand dollars in cash. In addition, the Tennessee & Coosa Railroad Company assumes the indebtedness of Mark Johnson, for services as bookkeeper and agent for the company, in the sum of \$1,500; to the King Powder Company in the sum of \$1,127.36, and other items of debt incurred for the company not to exceed in amount five thousand dollars. Adopted. Motion made by S. K. Rayburn, seconded by W. Seabold and carried?"

A. I think it was April 2, 1888; I voted against that resolution. On the 11th of April, nine days afterwards, I accepted the proposition by telegram.

Q. On the 11th of April, 1888, did you not address to E. A. Quintard, president of the Tennessee & Coosa Railroad, care Dr. John A. Wyeth, 267 Madison avenue, New York, a telegram as follows: "I agree to accept and comply on my part to terms of resolution adopted by your board of directors at Guntersville on April 2, of this year. To whom shall I surrender possession of the Tennessee & Coosa Railroad? Answer." (Signed) "Hugh Carlisle?"

A. I sent that.

Q. And in answer to your telegram didn't you receive a telegram from E. A. Quintard as follows: "Leave W. Beggs in charge until Case arrives; chief engineer will take charge until manager appointed?" (Signed) "E. A. Quintard, president?"

A. Yes, that is correct.

Q. And you did turn over the road in accordance with that telegram, and they did give you the one hundred thousand dollars in bonds?

A. They gave me one hundred and five thousand dollars in bonds; they had no money to pay the five thousand dollars. I sold the bonds afterwards to Baxter, Shook and associates.

(It is admitted that the following papers, marked Exhibit D, in the case of the Nashville, Chattanooga & St. Louis Railway and others against Hugh Carlisle in the chancery court of Marshall County, is a correct copy of the papers signed by William Richardson, by W. R. Rison, attorney, and by Hugh Carlisle, and that the same may be used in evidence for whatever they are worth, the same as the original.)

EXHIBIT D.

STATE OF TENNESSEE, *Davidson County*:

Know all men by these presents, that I, Hugh Carlisle, of Marshall County, in the State of Alabama, for and in consideration of the sum of five thousand dollars, three thousand now paid to me in cash, the receipt whereof is hereby acknowledged, and two thousand dollars to be paid as hereinafter provided, do hereby convey, sell, and sign, and transfer, to William Richardson, of the county of Madison, State of Alabama, all my right, interest, claim and demand in and to one hundred and five bonds of the Tennessee & Coosa Railroad Company, a corporation organized under the laws of the State of Alabama, of the denomination of one thousand dollars each, numbered from one to one hundred and five each, inclusive; also about nine-tenths of the stock issued in the name of and by the Tennessee & Coosa Railroad Company; provided, the said William Richardson shall pay, within the next thirty days, to the said Hugh Carlisle the sum of ninety-seven thousand dollars in lawful money of the United States; and provided further, that the said William Richardson shall, within the next thirty days, pay to the said Hugh Carlisle the additional sum of twenty thousand dollars, to pay off and satisfy in full the claim of John Wyeth against the Tennessee & Coosa Railroad Company, amounting to twelve thousand five hundred dollars; but the said Richardson is not to pay the said sum of twenty thousand dollars until the said Carlisle surrenders and transfers to him the claims of said

Wyeth and Beggs. It is agreed and understood that should the said Richardson fail or refuse to pay the sum of ninety-seven thousand dollars within the next thirty days, then the said Hugh Carlisle shall be entitled to have and receive the sum of two thousand dollars in addition to the three thousand dollars now paid in cash.

The several sums of money provided for in this instrument are to be paid at the banking house of W. R. Rison, in the city of Huntsville, Alabama, and the bonds to be delivered at the same place.

Witness my hand and seal this the 8th day of June, 1889.

(Signed)

HUGH CARLISLE.

Witness:

WILLIAM RICHARDSON.

W. R. RISON.

In consideration of compliance with a certain option in full obtained from Hugh Carlisle, of Guntersville, Alabama, by William Richardson, of Huntsville, Alabama, whereby the former agreed to sell to the latter one hundred and five (105) bonds of \$1,000 each of the Tennessee & Coosa Railroad, numbered from one to one hundred and five, both inclusive; also a certain note dated Guntersville, Alabama, April 2, 1888, made by the said railroad company to John A. Wyeth, amounting, with interest to date, to twelve thousand seven hundred and sixty-three 31-100 dollars; also a certain note made by the said railroad company to George Beggs, of Macon, Ga., on which judgment was entered on the fourth day of April, 1889, in the circuit court of Etowah County, Alabama, for twelve thousand five hundred and twenty-seven 77-100 dollars, besides seven and 30-100 dollars costs; also so many shares of the capital stock of the said railroad company.

Now, this memorandum witnesseth compliance in full on the part of the said Hugh Carlisle with the said option availed of, dated June 8, 1889, by the delivery of the above-mentioned bonds, stock, and 314 notes to W. R. Rison, of Huntsville, Alabama, and also receipt in full for the sum of one hundred and twenty thousand dollars cash in hand and in full to the said Hugh Carlisle by the said W. R. Rison, agent for the said William Richardson, of Huntsville, Alabama.

WILLIAM RICHARDSON,
By W. R. RISON, *Attorney.*
HUGH CARLISLE.

Witness:

JOHN A. WYETH.

Dated New York City, June 20, 1889.

Q. I see in this agreement, made between yourself and William Richardson, above set out, that Richardson agrees to pay you \$20,000 to pay off and satisfy the claim of John Wyeth. Now, I believe you stated that debt was a debt due Wyeth for money loaned to the Tennessee & Coosa Railroad?

A. He had a note signed by the president of the company while I was in charge of the Tennessee & Coosa Railroad as agent constructing it from Attalla to Littleton.

Q. I see also in the agreement that you are to pay off a judgment against the company in favor of Geo. Beggs, of Macon, Georgia, amounting to \$12,527.77, besides costs. How much did you collect from Richardson on these two claims?

A. I received \$120,000, and paid these two claims.

Q. Isn't it a fact that you received \$97,000 from Richardson under the above agreement for your 105 bonds?

A. I got six less than that. Three thousand dollars I paid Hugh L. Cole and the Trust Company. I paid it out of the \$97,000.

(Objected to by counsel for Hugh Carlisle, because the written agreement in evidence shows what the transaction between Carlisle and Richardson was.)

Q. You got the \$97,000 from Richardson for the bonds?

A. I got the balance from Richardson after paying off these claims.

Q. Then you got \$20,000 to take up the claims of John Wyeth and George Beggs?

(Objected to by counsel for Hugh Carlisle because the contract shows what he got that \$20,000 for.)

315 A. I paid these two claims out of my own money.

Q. You say you paid these two claims out of your own money?

A. Yes.

Q. You paid Wyeth and Beggs each how much?

A. I paid them the amount this contract calls for.

Q. You say that transaction represented money loaned to the Tennessee & Coosa Railroad while you were agent; will you look at your account and show us where you credited the Tennessee & Coosa Railroad with these notes?

A.

Q. Did you credit the Tennessee & Coosa Railroad with this?

A. I did not. I was responsible to these two men, and told them I would see them paid, and paid them out of the first money I got hold of. I paid them, and also the Manhattan Trust Company, \$3,000, and also \$3,000 to Hugh L. Cole.

Q. What did Hugh L. Cole do for the Tennessee & Coosa Railroad Company?

A. He was attorney for the company.

Q. What did the Manhattan Trust Company do for the Tennessee & Coosa Railroad Company?

A. They were the trustees for the bonds; they had the bonds of the company.

Q. Do you know W. W. Carey, sr., of Marshall County?

A. Yes, sir.

Q. Did you not, at Guntersville, in 1891, just after the bill in this case was filed, on the veranda or porch in front of the hall of the courthouse at Guntersville, say that the Tennessee & Coosa Railroad then owed you \$85,000 or \$86,000, and that the Nashville, Chattanooga & St. Louis Railway Company had assumed it, and that you did not care if you lost this suit—that is, the lands in controversy—that you were secured anyway, and that you would rather have the money that you would get from the railroad than the land?

A. I do not remember any such conversation.

Q. Did you tell him anything in substance like that?

A. No, sir.

316 Q. Do you remember having any conversation at the time and place mentioned?

A. I had several conversations with him, but not at that time.

(Counsel for Hugh Carlisle objects to the question and answer because it is immaterial and irrelevant.)

Q. Do you know W. M. Coleman, the representative-elect of the legislature of Marshall County?

A. Yes.

Q. Did you, in the town of Albertville, on the streets, soon after this suit was brought, tell him, in substance, what I just asked you if you didn't say to Carey?

A. No, sir; I do not remember of ever having such a conversation with Mr. Coleman.

(Counsel for Hugh Carlisle makes the same objection as above.)

Q. Didn't you tell him, in substance, that the Nashville, Chattanooga & St. Louis was bound to pay your indebtedness which you held against the Tennessee & Coosa Railroad, amounting to \$85,000 or \$86,000?

A. I don't remember any such conversation at the time and place above stated.

Q. Didn't you tell him, at the time and place above-mentioned, that it was immaterial to you whether you gained the lands in controversy in this suit or not; that you would rather have the debt held against the Tennessee & Coosa Railroad Company, amounting to \$85,000 or \$86,000, and that the same was secured to you by the Nashville, Chattanooga & St. Louis Railroad Company?

A. I do not remember any such conversation. I do not think any such conversation took place.

(Counsel for the Government requested that the stenographer be instructed to copy in this deposition the contents of book Exhibit 8 to Hugh Carlisle's deposition, from pages 205 to 207, both inclusive.)

317 The following is a true copy of the words and figures contained in minute book, Exhibit 8 to Hugh Carlisle's deposition, from pages 205 to 207, both inclusive:

DECEMBER 20, 1869.

At a called meeting of the board of directors of the Tennessee & Coosa Railroad Company by the president: Present, Louis Wyeth, president; Montgomery Gilbreath, S. K. Rayburn, William H. Wiggs, G. Greenwood, George S. Henderson, Hugh Carlisle, directors, at the office of the company at Guntersville, Marshall County, Alabama, on the 20th day of December, 1869, the following proceedings were had to-wit:

The committee to whom was referred the business of making a settlement with Lewis H. Moore, late treasurer of said company, and also ascertain and report upon the claim of Henderson & Carlisle and Hugh Carlisle against said company, submitted the following report:

The undersigned committee beg leave to report to the president and directors of the Tennessee & Coosa Railroad Company that in pursuance of an order of the board of directors of said company made May 3, 1869, appointing them to make settlement with Lewis H. Moore, treasurer of

said company, and make report to said board, and also to ascertain and report what amount may be due from the company to H. Carlisle and Carlisle & Henderson. They have met Mr. Lewis H. Moore, treasurer, time and again, and have failed to complete the settlement.

The expenses made out by said treasurer are complete. We herewith submit the same as received from him, and ask to be discharged from further consideration of the same (which is filed with secretary and marked Exhibit A), which is not recorded because of its incompleteness.

R. K. BOYD, *Secretary*.

They have ascertained the indebtedness of the company to H. Carlisle to be as follows:

| 318 | | <i>Company indebtedness to H. Carlisle.</i> | |
|----------|---------|--|------------|
| | 1861. | | |
| Aug. | 1. | Amount due H. Carlisle on estimate No. 15 | \$5,655.40 |
| Aug. | 1. | Amount due H. Carlisle on estimate No. 11 | |
| | 1861. | | |
| Jan. | | To labor and material furnished | 3,849.30 |
| | | Bridging culvert, hauling and filling broken embankment in section No. 3 | 300.00 |
| April. | | To labor of men and mules piling and saving bridge timbers at Guntersville | 250.00 |
| | 1869. | | |
| Dec. 20. | | To amount of expenses incurred by H. Carlisle in going to Montgomery on business for company allowed by board of directors | 400.00 |
| | | Interest due on the above indebtedness, excepting the \$100 item allowed | 6,752.46 |
| | | Balance due H. Carlisle to date | 17,297.16 |
| | | H. Carlisle has received on the above the following payments: | |
| | 1861. | | |
| Sept. 6. | | Payment | 450.00 |
| | 1862. | | |
| Mar. 1. | | Cash at Huntsville | 2,000.00 |
| | | Order of Major Wiggs | 100.00 |
| | | | 2,550.00 |
| | | Interest due on the payments paid to H. Carlisle as above date | 1,507.55 |
| | | Amounting to the sum of | 4,057.55 |
| | | Amount due on John Noble's stock | 500.00 |
| | | Amount due on P. M. Bush's stock | 250.00 |
| | | Amount due on Jacob McCaine's stock | 75.00 |
| | | | 825.00 |
| | | Interest on \$825 to Dec. 1, 1856 to Dec. 20, 1869 | 858.00 |
| | | | 1,683.00 |
| 319 | 1869. | | |
| | Dec. 20 | | 4,057.00 |
| | | Whole amount of payments with interest to date | 5,740.00 |
| | | Balance due | 11,467.16 |
| | 1869. | | |
| Dec. 20. | | Whole amount of indebtedness to H. Carlisle | 17,207.16 |
| Dec. 20. | | Whole amount of payments to H. Carlisle | 5,740.00 |
| | | Leaving the balance due Dec. 20, 1869 | 11,467.16 |

G. GREENWOOD,
W. H. WIGGS,
M. GILBREATH,
Committee.

On motion of W. H. Wiggs the report of the committee was received, and by a vote of the board of directors was unanimously adopted. On motion it was resolved that the Tennessee & Coosa Railroad Company allow H. Carlisle \$400 for his expenses to Montgomery on business for the company. Said amount was incorporated in the report of the committee and adopted.

S. K. Rayburn mo'ved that the president be authorized and directed to issue a certificate of indebtedness, under the seal of the company, to H. Carlisle for the sum of eleven thousand four hundred and sixty-seven dollars and sixty-one cents, and company bonds to that amount be placed in his hands as collateral security, which motion being submitted to a vote of the board was adopted unanimously.

On motion the board of directors adjourned to meet on Tuesday, the 4th day of January, 1870.

R. K. BOYD, *Secretary*.

DECEMBER 20, 1869.

Wednesday, 6 o'clock p. m., the session of the examiner adjourned to meet again on Friday, the 21st inst., at 3 o'clock p. m.

320 Continuation of cross-examination of Hugh Carlisle by Mr. White, counsel for the Government.

SATURDAY, *September 29, 1894*—3 o'clock p. m.

Q. Major, since the adjournment, several days ago, have you found any estimates showing the indebtedness of the Tennessee & Coosa Railroad to you before the war, other than those you have already produced?

A. No.

Q. Have you any estimates of the engineer or engineers showing the indebtedness to Carlisle & Henderson for work done on the road up to and including the year 1861?

A. I don't know; I haven't brought any with me.

Q. Have you any book or account of your own—that is, a private book or account or original entry, showing the indebtedness of the Tennessee & Coosa Railroad Company to you up to and including the year 1861 for work done on the construction of the road?

Q. I will ask you if you don't know that S. K. Rayburn wrote to the officers of the Nashville, Chattanooga & St. Louis Railway Company, who were also the officers of the Tennessee & Coosa Railroad Company, a letter, of which the paper I hand you is a copy?

(Counsel for Government here hands witness a paper, which is marked Exhibit T.

Counsel for Hugh Carlisle objected to the introduction of the paper, because it is immaterial and irrelevant, and because the declaration was made subsequent to the date of the debt and cannot bind Carlisle, and because the declaration of Rayburn was made after he had ceased to be an officer of the Tennessee and Coosa Railroad.)

A. I don't know of my own knowledge; I have seen a paper of this kind before; Mr. Thomas, of Nashville, president of the Tennessee & Coosa Railroad, showed me a paper similar to it.

Q. The paper he showed you was in the handwriting of Mr. Rayburn?

A. No, sir; it was printed.

321 Q. I will ask you this, if you didn't know that on the 8th day of October, 1885, a notice was published in the Guntersville Democrat, of Guntersville, Alabama, as follows: "G. V. Democrat, Oct. 8, 1895, of file of Probate Office of Marshall Co., Ala. Notice: Whereas at a meeting of the board of directors of the Tennessee & Coosa Railroad Co., held at Guntersville, Ala., on the 26th day of September, 1885, the following resolution was adopted: Resolved, that notice be given to all those who have agreed to purchase land from the T. & C. R. R. Co., to come forward and pay the first installment due upon such agreement on or before the 1st day of January next, said payment to be made to Hugh Carlisle, at Attalla, or to S. K. Rayburn, at Guntersville, and that in the event such payments are not made by the said 1st day of January next their right to the possession under such agreement will be forfeited. And now, in pursuance of said resolution, the notice therein is hereby given by publication in the Guntersville Democrat for 30 days.

"LOUIS WYETH, *President*.

"S. K. RAYBURN, *Secretary*."

A. Yes; I think it was.

Q. Was the resolution referred to in said notice passed by the board of directors of the Tennessee & Coosa Railroad Company?

A. I don't remember whether I was present or not.

Q. Do you know whether such a resolution as recited in that notice was passed?

A. I think, to the best of my recollection, it was.

Q. Did you get any shares of stock in the Tennessee & Coosa Railroad Company from Mr. Tom Laeky since the war?

A. I am not clear on that; I don't remember.

Q. Don't you know that you got \$3,000 of stock from him, which he gave you upon an agreement that you would finish the road?

A. I don't remember anything about it.

Q. Do you remember whether he gave you \$3,000 worth of stock?

A. No, sir; I don't remember.

322 Q. Do you say he did not.

A. I don't know whether he did or not; I don't remember. I don't think he did; that is my best recollection.

Q. Now, you said, the other day, your stock cost you from fifty cents to a dollar, I believe. If you got \$3,000 of stock from him for nothing, it didn't cost you anything.

A. I don't remember getting any from him.

Q. Did you know old man Reese, who runs a mill out there, not far from Attalla?

A. Yes.

Q. Do you know whether you got a lot of stock from him?

A. Yes.

Q. What did you give him for it?

A. I don't remember.

Q. Don't you know that you gave him 8 cents for it?

A. I know that I gave him a great deal more than that. I did not buy any less than fifty cents.

Q. Mr. Carlisle, after our adjournment here, some days ago, didn't you endeavor to get the officers of the Tennessee & Coosa Railroad, Mr. Thomas, of Nashville, or Mr. Ambrose, of Nashville, who are also officers of the Nashville, Chattanooga & St. Louis Railway, to recall from the complainant's counsel the minute book marked Exhibit S.

A. No, sir, I have not seen Major Thomas in a long time; never written to him, either.

(Counsel for the Government, believing that any statement made by S. K. Rayburn would not be competent evidence, the interrogatories heretofore propounded to witness, Hugh Carlisle, to produce such statements made in the handwriting of said Rayburn are withdrawn.)

Redirect examination by Mr. GOODHUE:

Q. You state that you haven't found any private books of your own. I will ask you, upon what you relied to ascertain the amount of the indebtedness of the Tennessee & Coosa Railroad to you? On what did you rely?

323 A. I relied on the first statement made by Mr. Rayburn and the balance that my books show; I mean the books of the Tennessee & Coosa Railroad Company.

Q. I will ask you about the \$2,500 item of Noble right of way, whether you ever received any cash money on that transaction?

A. No, sir; not a cent.

Q. How did Noble pay for that right of way?

A. By giving the company credit on the note that he held against the company.

Q. Is that in the note that is referred to as a credit in your account given to Sam Noble, \$10,248.92.

A. Yes.

Q. Did the East Alabama & Cincinnati Railroad ever pay you that indebtedness, or any part of it?

A. No, sir.

Q. Have you among your papers any memorandum made by the secretary, Mr. S. K. Rayburn, at the time of this transaction with the East Alabama & Cincinnati Railroad, showing the amount of the indebtedness of the company at that time?

A. Yes, sir; Mr. Rayburn presented me with a statement.

Q. Was that done at your own request?

A. Yes, sir.

Q. Is this the statement?

(Witness is here handed a statement, marked Exhibit U, to Hugh Carlisle's testimony.)

A. Yes; it is the original statement, in the handwriting of Mr. Rayburn.

(Counsel for the Government objects to the statement being introduced, because it is the mere statement of Rayburn when he was not under oath, and was in no way binding upon the Tennessee & Coosa Railroad Company, and because the same is mere hearsay, and was not such a statement as could bind the Tennessee & Coosa Railroad Company.)

Q. When was that statement made?

A. About the time it appears there.

324 Q. It don't bear any date at all?

A. Yes, it does; July 12, 1871.

Q. Why was that statement made out—in connection with what?

A. In connection with the sale of the road to the East Alabama & Cincinnati Railroad.

Q. Who kept the books and accounts of the company?

A. Mr. Rayburn.

Q. What office did he hold in the company at that time?

A. He was secretary.

Q. Whose handwriting is this paper?

(Witness is here shown paper marked Exhibit V.)

A. Mr. Rayburn.

Q. Does that letter bear its true date?

A. Yes, sir.

Q. You received that letter from Mr. Rayburn at that time?

A. Yes, sir.

(Objected to by counsel for the Government because it is the mere declaration or statement of S. K. Rayburn, and was not binding upon the Tennessee & Coosa Railroad Company, and is not competent evidence, being in the nature of hearsay evidence.)

Q. Look at this letter, marked Exhibit W; whose handwriting is that?

A. Mr. Rayburn's.

(Same objection as above.)

Q. You have been asked about a resolution in regard to the Tennessee & Coosa Railroad Company giving notice to purchasers of land; I will ask you now if the Tennessee & Coosa Railroad Company ever took the possession away from these folks to whom they had sold, under that resolution?

A. No, sir.

Q. As I understand you, the board of directors passed a resolution and that was the end of it, except giving the notice in the paper?

A. Yes, sir.

325 Q. You were asked to produce a paper executed in 1869 by the Tennessee & Coosa Railroad Company; is this the paper?

(Witness is here handed a paper marked Exhibit X.)

A. Yes, I found it, and now produce it.

Q. You were asked to produce a statement made by Rayburn to you, showing the amount due you on January 10, 1880; have you been able to find that statement?

A. I have not been able to find it.

Q. Was such a statement rendered to you?

A. Yes, sir.

Q. What did it show as the amount due you on that date?

A. \$32,326.76.

Q. That includes interest calculated up to date?

A. Yes, sir.

Q. Was that statement in writing?

A. Yes, sir.

(Objected to by counsel for the Government, because the writing is not produced, and because the statement itself is mere hearsay, and is in no way binding on the Tennessee & Coosa Railroad, and because, if the

writing was produced, it would be mere statement, and would be in the nature of hearsay evidence and in no way binding on the Tennessee & Coosa Railroad.)

Q. What search have you made for them?

A. I had Mr. Saunders searching for it for several days; I have been hunting for it nearly a week; I searched all over my papers and all the places I kept papers. Mr. Saunders showed it to me when he found it; I don't remember how long that has been.

Q. Can you account for the difference between the amount, as shown by the statement made in 1869 and the \$32,326.76 shown in Rayburn's statement in 1880? Can you tell what the difference is?

(Objected to by counsel for the Government, because it is mere argument.)

326 A. I just took Mr. Rayburn's statement and started my account on it, January 10, 1880—some nine or ten years later.

Q. Did you know, at the time Rayburn rendered that statement, that it was correct?

A. Yes, sir; I was willing to settle on that, and did settle on that as the amount due.

Q. Have you in your possession a copy of the Beggs note? If so, attach it to your deposition, and mark it Exhibit Y.

A. Yes, sir; here it is.

(Witness produces copy of Beggs' note, which is marked Exhibit Y.)

Q. Does that note bear its true date?

A. Yes, sir.

Q. That represents the true indebtedness of the Tennessee & Coosa Railroad?

A. Yes, sir.

I will ask you if you charged the Tennessee & Coosa Railroad with the \$26,000 that you paid to Wyeth and Beggs to take up those notes?

A. No, sir.

Q. You did not credit the Tennessee & Coosa with the proceeds of the notes either?

A. No, sir.

Q. Did you pay these notes out of your own money, or the money of the Tennessee & Coosa Railroad?

A. I paid them with my own money; it was on my credit that they got the money.

Q. State what agreement you had with Beggs and Wyeth, if any, about seeing this money paid?

A. They looked to me for the money, and I told them I would pay them out of the first money I got.

Q. At the time the Tennessee & Coosa sold to the East Alabama & Cincinnati, did the Tennessee & Coosa Railroad owe either Beggs or Wyeth?

A. No, didn't owe them anything.

327 Q. I will ask you whether or not, after you finished to Littleton in the fall of 1868, you continued to work on the mountain beyond?

A. Yes, sir; I built the bridges all the way up; I don't know how many, quite a number; a dozen of them.

Q. I see here an item for attorneys' fees paid to Rice, Denson, etc.;

were these services for action of ejectment against the East Alabama & Cincinnati Railroad to recover the lands for the road?

A. Yes, sir.

Q. I see an item, December, 1885, cash paid Tom Watkins, \$693.07; did you pay this money?

A. Yes, sir.

Q. Where does he now live?

A. In Florida.

Q. What was that money paid for?

A. For clearing up the right of way and work on the Tennessee & Coosa Railroad; this work was all over the right of way from Gadsden to Guntersville.

Q. How wide?

A. About 100 feet.

Q. I see an item of cash to G. Lewis, paid \$100; what was that for?

A. Judgment he had against the company for work done on the road. I paid him \$800.

Q. These bills that are shown in the invoice book, exhibit F; did you pay these bills on behalf of the Tennessee & Coosa Railroad Company?

A. Yes, sir; they were paid by my money.

Q. Did you pay the hands as shown by the two time books that are shown in evidence?

A. Yes, sir; all paid with my money.

Q. I see an item here for bridge timbers and cross ties in 1885; did you pay that?

A. Yes.

Q. I see here a locomotive, "Thomas M. Edwards," \$1,200; did you pay \$1,200 to the Rhode Island Works for the Tennessee & Coosa Railroad Company?

A. Yes, sir.

328 Q. I see here an item, Woodward, Wight & Co., \$10,248.92; did you pay that?

A. Yes, sir.

Q. Look on the invoice book, Exhibit F, page 138, at the bill of lading; is that part of the stuff charged there, 15 cars?

A. Yes, sir.

Q. I notice that the amount is \$10,248.92, and I notice that the note given to Mr. Sam Noble is for the same, and that it is to the order of Mr. Noble; is that the way you gave him the proceeds of that note?

A. Yes, sir.

Q. I will ask you if it is not a fact that you relied greatly on Mr. Rayburn and the books that he kept to ascertain and determine the amount of your indebtedness against the company?

A. Yes; I had entire confidence in him; he kept the books of the company and managed the affairs with regard to these statements.

Q. What is this paper a copy of?

(Witness is here handed a paper marked Exhibit Z to Hugh Carlisle's testimony.)

A. It is a copy of the note I gave to George Beggs.

Q. Now explain how Beggs got both notes.

A. I gave him that one and the company gave him the second one.

Q. Then Beggs held both of the notes?

A. Yes, sir.

Q. Both of these copies bear the true date of the notes, do they?

A. Yes, sir.

Q. Both these notes represent the same indebtedness?

A. Yes, sir.

Q. In your direct examination you said something about having some thirty-six slaves?

A. I meant that during the war.

Q. Did you have as many as thirty-six slaves at the time this work was done?

329 A. No, sir, I had slaves, but do not think I had as many as that.

Q. In your direct examination you stated that you were a director just before the commencement of the war, continuously until you lost the book. Is that a fact?

A. No, I was not.

Q. When did you become a director of the company?

A. In 1866.

Q. In your cross-examination you said something to Mr. White about a deed from the Nashville, Chattanooga & St. Louis Railroad and the date of it; have you seen that deed since that time?

A. Yes, sir.

Q. What year was that executed in?

A. I think in 1893.

Q. Have you any recollection outside of what you see in the minutes of the book shown you by Mr. White of the settlement of 1869?

A. I have not.

Q. There may have been a settlement in 1869?

A. Yes, sir.

Q. How old are you now?

A. I am over 70 years of age; I was seventy last year.

Q. You said something in your cross-examination about the payment from Mr. Noble in money; did you get any money from Mr. Noble, some \$2,500?

A. No, sir; not a cent.

Recross-examination by Mr. WHITE:

Q. When you received from the Tennessee & Coosa Railroad Company the \$105,000 of bonds, how much stock did you deliver to the company?

A. I delivered 200 shares.

Q. Mr. Carlisle, you introduced a copy of a note to Beggs; when was that debt created that that note was given for?

A. A little before that note was given.

330 Q. What do you mean by a little?

A. Some time before the note was given.

Q. Why didn't you give the company credit for the notes?

A. I considered it was a transaction of my own; I had an object in view in giving the company's notes; it was to secure Mr. Beggs, in case of my death or anything happening to me.

Q. Was that in cash what you got from him?

A. Yes, sir.

Q. What did you do with that cash?

A. I used it in my business; private transactions of mine.

Q. Now, about the Wyeth note?

A. Well, a part of that note Dr. Wyeth used for the company, in having bonds printed, lithographed, etc., and part for something else, and a part of it for my own account.

What part was for the company and what part for you?

A. I think the bonds cost, having them engraved, \$2,500; that was the company's part.

Q. Was the balance for you?

A. Yes.

Q. For you individually?

A. Yes.

Q. When was the statement marked Exhibit U made out?

A. It was given at the time it bears date, July, 1871; it was when we turned the road over to the East Alabama & Cincinnati Railroad. It was gotten up for that purpose.

Q. You say that Rayburn made you a statement of indebtedness on January 10, 1880, in writing, which you can not find?

A. Yes, sir; I cannot find it, but I have seen it frequently.

Q. When did you see it last?

A. It is some time. Mr. Saunders found it, within the last five months, and called my attention to it.

Q. Were you present when he found it?

A. Yes, sir.

Q. Where did he find it?

A. Among my papers; I think it was in a government caisson.

Q. About what was the substance of that statement?

331 A. Just like that; that the company owed me thirty-two thousand and some odd dollars.

Q. Did you leave it with Saunders?

A. I don't know.

Q. What Saunders was that?

A. I don't know his given name; he is here with me to-day.

Q. The man you expect to examine as a witness?

A. Yes.

Q. At that time you had in your possession his statement, signed by Louis Wyeth, marked Exhibit X to your deposition?

A. Yes, sir.

Q. And you stated that you would rather base your statement on Rayburn's statement than on that certificate?

A. Yes, being ten years' difference.

Q. What services had been rendered which were embraced in Rayburn's statement?

A. They had been allowing me for certain work that I had done from time to time.

Q. What sort of work?

A. Work for the company.

Q. What kind of work?

A. I can not recollect now; I done a great deal of work; I can not remember any of it now.

Q. In your account for work done after you were appointed the agent of the Tennessee & Coosa Railroad Company, in 1883, where did you get the money you advanced to the company creating this indebtedness?

A. My own private means.

Q. Was it cash?

A. Yes.

Q. Where did you keep that cash?

A. I kept it about my house.

Q. Didn't keep it in bank?

A. No, sir.

Q. Was there a bank at that time in Gadsden?

A. No.

Q. At Guntersville?

A. No, I think not.

332 Q. What bank did you do business with at that time?

A. The First National of Nashville, and Third and Fourth National; I had a large balance due me at that time.

Q. How large?

A. One time I had forty or fifty thousand dollars in the First National Bank.

Q. How much in the Third?

A. From ten to twenty-five thousand dollars.

Q. Mr. Goodhue asked you about certain items of account in your account against the Tennessee & Coosa Railroad, expended for it after you became its agent in 1883. Do you have any personal recollection of these items?

A. What were the items?

Q. Do you have any personal recollection of the item paid G. Watkins?

A. Yes; I remember it very distinctly.

Q. About the Denson item, do you remember that independent of the book?

A. Yes, sir.

Q. About the item you paid employes wages on the Gadsden branch \$1,879.73; do you recollect that independent of the books?

A. No; it is so long ago.

Q. Here is an item, a credit given to the Tennessee & Coosa Railroad of \$1,524.98, the gross earnings of the road for 1886; do you remember anything of that?

A. Yes, sir; that is just what I earned that year. I turned over all the books to Mr. Quintard and Mr. Braeme.

Q. Did those books which you turned over to them show the items of expenditure made by you for the Tennessee and Coosa Railroad while you had charge of it?

A. I think they did.

Q. Did they show the earnings of the Tennessee & Coosa Railroad?

A. Yes, sir.

Q. When did you turn them over to Quintard & Braeme?

A. On the 11th of April, 1888.

333 Q. I see an account here in Exhibit B to Mark Johnson's testimony, setting out various items of your account against the Tennessee & Coosa Railroad Company; was this the book kept at the time the work was going on?

A. I think it was.

Q. Then how was it that this book was not turned over to Quintard & Braeme?

A. I don't know; I think that was my individual book.

Q. Isn't it a fact that you and Johnson got together and made out this account long after you finished that work, from the data you had on hand, and from the best data you could get?

A. Yes, from such papers and memoranda, which were put down at different times, just as the transactions occurred.

Q. Will you explain to me how it is that this same account appears in two different places in this book; that is, it appears from page 1 to page 7 inclusive, and also appears on page 198 to 213. It seems to be all in Mark Johnson's handwriting?

A. I don't know; I can't tell.

Q. Isn't it a fact that a large number of the items contained in the account book, beginning with page 199, and the page following, are also contained on the page beginning 1 and page following?

A. Yes, it appears so.

Q. Isn't this the book that was kept in your administration of the Tennessee & Coosa Railroad Company's business? Isn't it a book that you kept during the time that you were working the road for the company?

A. Yes.

Q. It was a book for the Tennessee & Coosa Railroad while you had charge?

A. Yes.

Q. Don't this book show the real indebtedness or expenditures made for the company?

A. Yes, this shows some of the expenses.

Q. Isn't that the only book kept by you for the company?

A. It is one of the books of the company.

Q. This ought to show the true indebtedness of the company?

A. Well, not all of it.

334 Q. What other books did you have?

A. I turned over all the other books to Braeme and Quintard.

Q. Don't this book show all the transactions of the company that would appear on the ledger during the time that it was kept?

A. No; I think not.

Q. You kept several books then?

A. I don't remember.

Q. All of this book is in the handwriting of Mark Johnson?

A. All I can see.

Q. Your accounts, beginning on page 1 and going to page 7, and also on page 199 to page 213, are in the handwriting of Mark Johnson, are they not?

A. Yes, that looks like Mark Johnson's, and this also.

Q. Some of these items were for commissary account. Was that kept by you or by the company? Who owned the commissary, you or the company?

A. I ran the commissary.

By Mr. GOODHUE:

Q. You said something about all the stock that you had being paid up stock; do you recollect what, if any, stock that you had that was not paid-up stock?

A. I expect that that statement that Mr. Boyd made at that time was correct; that party that I bought that stock from owed the company and I assumed the debt. I do not recollect anything about it myself, but just take it from the book.

335 EXHIBIT A OF CARLISLE'S TESTIMONY.—N. W. TRIMBLE, Examiner.

GUNTERSVILLE, ALA., July 11, 1859.

To president and board of directors T. & C. R. R. Co.

GENTLEMEN: I, the undersigned, propose to grade five sections of your road at the following prices:

| | |
|--|--------|
| Sections 16, 17, 18, solid rock..... | \$0.95 |
| “ “ “ loose rock..... | .45 |
| “ “ “ earth excavation from cuts..... | .19 |
| Grubbing and clearing per mile..... | 140.00 |
| Sections 19 and 20, solid rock..... | .90 |
| “ “ “ loose rock..... | .40 |
| “ “ “ earth from cut and furrowed..... | .18 |

Furrowed embankment on sections 16, 17, 18, I propose to leave the value of it to the engineer and myself or do it as low as any other responsible contractor will do it or relinquish it. I bind myself to carry into embankment, when required, all material excavated from cuts, except such portions as are thrown out of side stakes of the road by blasting or other means employed by excavation of cuts. All extra work to prevent slides or remove them from cuts to sustain embankment to be paid for by the railroad company.

| | |
|---------------------------------------|--------|
| Box culverts, per perch..... | \$3.00 |
| Hauling stone for same, per mile..... | .75 |

I will give you the first railroad men South if required.

The above is respectfully submitted.

(Signed)

H. CARLISLE.

336 EXHIBIT B TO CARLISLE'S TESTIMONY.

[Duplicate.]

Articles of agreement, made and concluded this first day of November, in the year of our Lord eighteen hundred and sixty, between H. Carlisle, of the first part, and the Tennessee & Coosa Railroad Company, of the second part;

Whereas the party of the first part has agreed, for and in consideration of the payments hereinafter mentioned, to grade and prepare, ready for laying down the railway track thereon, such portion of section twenty-

one of the fourth division of the said Tennessee & Coosa Railroad as may be built of such work, according to the manner and conditions following, so far as the same are applicable thereto:

SPECIFICATIONS.

Now, this agreement witnesseth, that the said party of the first part doth hereby promise and agree to and with the said company, that he, the said party of the first part, shall and will construct and complete, in the manner aforesaid, the aforesaid portion of section twenty-one of the fourth division by the first day of May, 1861; and it is hereby expressly agreed that the time herein stipulated shall be considered as of the essence of this agreement.

In consideration whereof the said Tennessee & Coosa Railroad Company does hereby agree with the said party of the first part that the said company shall and will, for doing and performing the work aforesaid, in the manner aforesaid, well and truly, pay or cause to be paid to the said party of the first part, his executors or administrators, eighteen cents per cubic yard—the section to be received as soon as completed.

The above payments shall be made in the following manner, that is to say: During the progress of the work and until it is completed, there shall be a monthly estimate made by the aforesaid engineer of the quantity, character, and value of the work done during the month or since the last monthly estimate, 90 per cent of which value shall
337 be paid in current funds to the said party of the first part; and when the said work is completed and so accepted by the said chief engineer, there shall be a final estimate made by the engineer of the quantity, character, and value of said work, agreeably to the terms of this agreement, when the balance appearing to be due to the said party of the first part shall be paid to him, upon his giving a release under seal to the said company from all claims and demands whatsoever growing in any manner out of this agreement, the remaining 10 per cent of the value of said work so determined by said final estimate being paid in cash.

And it is expressly understood that the monthly and final estimate of the said engineer, as to the quantity, character, and value of the work done during the month, or since the last monthly estimate and the completion of the work, shall be conclusive between the parties to this contract, except for error founded in fraud or mistake; the monthly estimates of said engineer being, however, subject to correction by him in his final estimate. And if the chief engineer deem it proper at any time to revise and alter, in such manner as he may see fit, the monthly or final estimates of said engineer, then the estimate of the said chief engineer shall be substituted to all intents and purposes in place of the estimate of said engineer; it being, however, wholly optional with the said chief engineer to exercise such power of revision or not.

And it is hereby further agreed that in case the said party of the first part shall not well and truly, from time to time, comply with and perform all the terms hereinbefore stated and stipulated on his part in manner and form, and within the time hereinbefore mentioned, or in case it should appear to said chief engineer that the work does not progress with sufficient speed or in a proper manner, or in case of interference with said work by legal proceedings, the said chief engineer, under the direction of the

president and board of directors, shall have power to annul this contract by serving a notice in writing upon said party of the first part, if he is upon the work to receive it, or by posting such notice upon the door of his usual boarding or dwelling house, on or near the work. If he is

absent therefrom; when upon such serving of said notice, the foregoing agreements on the part of the said company and every clause and part thereof shall become null and void, and the party shall have no right to recover the unpaid part of the value of the work done by the said party of the first part; and the party of the second part shall be at liberty to employ any other person or persons in the place and stead of the said party of the first part to do or complete the work herein mentioned.

And the said party of the first part hereby further agree with the said company that, should they determine to build bridges, culverts, walls, or other masonry, or to do other work not hereinbefore enumerated, on the said section or sections, and the said party of the first part will perform, build, and complete the same, as though said work had been enumerated in this agreement, and for the prices hereinbefore stipulated to be paid for similar kinds of work, and upon the same terms and conditions, except with regard to the time of completing the same, which it is hereby agreed shall be extended at the discretion of the chief engineer, when the limit fixed by him shall have the same effect as though it were inserted in this agreement.

In witness whereof the said party of the first part and S. K. Rayburn, president, for and on behalf of the said company, have hereto set their hands, on the day and year first above written.

(Signed)

HUGH CARLISLE. [SEAL.]

(Signed)

S. K. RAYBURN, [SEAL.]

President T. & C. R. R. Co.

Signed and delivered in the presence of

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EXHIBIT H TESTIMONY OF CARLISLE.

OFFICE OF THE TENNESSEE & COOSA RAILROAD COMPANY.

Guntersville, September 14, 1887.

The board of directors of the Tennessee and Coosa Railroad Company met pursuant to call of the president of said company.

Present: Louis Wyeth, president, and M. Gilbreath, Henry L. Miller, Hugh Carlisle, Wendolen Seabold, S. K. Rayburn, directors.

The president, after calling the meeting to order, stated fully the object of the meeting.

It was therefore, on motion of M. Gilbreath and seconded by H. L. Miller,

Resolved, That action of Hugh Carlisle in taking actual possession of the roadbed, right of way, franchise and property of the Tennessee and Coosa Railroad from Attalla to Gunter's Landing, on the Tennessee River, be fully authorized, ratified, confirmed, and approved by this board of directors. (Adopted.)

And be it further resolved, That we do ratify the further action of the said Hugh Carlisle in hiring hands and putting them to work in cutting the timber and clearing out the roadbed or track on said road, and using

any other effort he may deem necessary in order to take, retain, and hold the possession of said Tennessee and Coosa Railroad track or bed and right of way, together with its franchise, subject at all times to the order of the board of directors of said Tennessee and Coosa Railroad Company. (Adopted.)

On motion of S. K. Rayborn, seconded by M. Gilbreath, it is resolved that we do nominate, constitute and appoint Hugh Carlisle as financial and constructing agent for the Tennessee and Coosa Railroad Company, thereby clothing him with full power and authority to construct, build, and equip said railroad and to put it into running order from Attalla to Guntersville, on the Tennessee River, and for the purpose of investing him with full power and authority, the full intent and purpose of this resolution, we do authorize and empower him, the said Hugh Carlisle, to use any and all of the assets of said Tennessee and Coosa Railroad Company to carry out the full intent and meaning of this resolution, we ratifying the same as fully as it is in our power to do. Adopted.

It is further resolved by the said board of directors of the said Tennessee and Coosa Railroad Company, and we agree to and with the said Hugh Carlisle, to pay him out of the assets of the said road the original cost and expenses he may incur in the construction, equipping, and putting said road in running order, together with twenty per cent in addition for superintending and advances made by him on cost of construction, equipping, and putting said road in running order. Adopted.

It is further resolved, That the said Hugh Carlisle hold and retain a lien on said railroad and its franchise, both real and personal, until said cost and expenses incurred by him, the said Hugh Carlisle, are fully paid off and discharged, together with the twenty per cent by said board of directors agreed to be paid over and above the cost and expenses of construction and equipping the said road. Adopted.

And on motion of W. Seabold, seconded by H. L. Miller, it is resolved that the indebtedness of the Tennessee and Coosa Railroad Company to Hugh Carlisle, for work done on the said road during the years 1860 and 1861, are just and equitable, and are by this resolution revived and renewed as against said company; and it is further resolved that all all other claims and demands that have heretofore been allowed to said Hugh Carlisle by the resolution of the board of directors of said Tennessee and Coosa Railroad Company be, and the same are hereby, revived and renewed against said railroad company from this date, to wit, September 14, 1883, together with interest that has accrued thereon up to date. Adopted.

(Sgd)

LOUIS WYETH,
Pres. T. & C. R. R. Co.

(Sgd)

S. K. RAYBORN,
Sec. T. & C. R. R. Co.

THE STATE OF ALABAMA, *Marshall County*:

I, Samuel K. Rayborn, secretary of the Tennessee & Coosa Railroad Company, hereby certify that the foregoing resolutions were adopted by the board of directors of the Tennessee and Coosa Railroad Company and spread upon the minutes of said board.

Given under my hand and the corporate seal of said Tennessee & Coosa Railroad Company this 15th day of September, 1883.

[SEAL.]

S. K. RAYBURN,
Sec. T. & C. R. R. Co.

STATE OF ALABAMA, *Etowah County*:

I, George E. Turrentine, notary public in and for said county and State, hereby certify that the foregoing is a true and exact copy of the original minutes of the Tennessee & Coosa Railroad Company.

Given under my hand and seal this 19th day of November, 1890.

[SEAL.]

GEORGE E. TURRENTINE,
Notary Public.

EXHIBIT M TO TESTIMONY OF CARLISLE.

List of lands sold by Hugh Carlisle, viz: in 1887.

McCord, W. H., northeast quarter of southwest quarter section 11, township 9, range 4.

Rhodes, W. B., northeast quarter of southeast quarter, section 33, township 8, range 4.

Haynes, W. H., southeast quarter of northwest quarter, section 11, township 9, range 4.

Miller, Henry L., north half of southwest quarter, section 19, township 8, range 4.

Swords, Erwin, northwest quarter of northeast quarter, section 21, township 8, range 4.

Riddle, Thomas, northeast quarter of northwest quarter, section 21, township 8, range 4.

Farmer, Jack, southeast quarter of southwest quarter, section 21, township 8, range 4.

342 Colquitt, S. D., northwest quarter of southwest quarter, section 21, township 8, range 4.

Colquitt, P. R., southwest quarter of northwest quarter, section 21, township 8, range 4.

Shipp, John W., southeast quarter of northeast quarter, section 11, township 8, range 4.

Whil, Franklin R., northwest quarter of northwest quarter and southwest quarter of northwest quarter, section 25, township 11, range 5.

Fitzgerald, P. T., north half of northwest quarter, section 35, township 11, range 5.

McClelden, James, northeast quarter of northwest quarter, section 13, township 11, range 5.

Fletcher, A. J., northwest quarter of northwest quarter, and northeast quarter of northwest quarter and north half of southwest quarter of northwest quarter and north half of southeast quarter of northwest quarter, section 15, township 9, range 4.

Hendricks, Jasper M., northwest quarter of northwest quarter, section 27, township 11, range 6.

Watkins, Thomas, south half of northeast quarter, north half of southeast quarter, east half of southwest quarter, section 29, township 11, range 5.

Wilson, R. V., northeast quarter of southwest quarter, section 31, township 11, range 6.

Whisemant, J., northwest quarter of southwest quarter, section 31, township 11, range 6.

Sibert, W. J., fractional quarter in northwest corner, section 7, township 12, range 6.

Penn, J. W., southwest quarter of northwest quarter, section 25, township 11, range 5.

Henry, Samuel, east half of northwest quarter of southeast quarter, west half of northwest quarter of southeast quarter, section 31, township 11, range 6; northeast quarter of southwest quarter, section 7, township 12, range 5.

Hughes, Joseph, southeast quarter of southeast quarter, section 29, township 11, range 6.

Letson, Jacob, mineral res. southeast quarter of northwest quarter, section 29, township 11, range 6.

McLeod, A., northeast quarter, section 15, township 9, range 4.

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EXHIBIT P TO TESTIMONY OF CARLISLE.

Report of the president and directors to the stockholders in the Tennessee & Coosa Railroad Company.

GUNTERSVILLE, November 22, 1861.

The president and directors hereby submit to the stockholders their sixth annual report:

At the close of the last fiscal year and date of your last annual report the board expressed their gratification in regard to the prosperity of the road and the prospects at that time of the speedy completion.

Enough means were on hand and accessible to finish the grading of the road, and it was expected by the sale of the \$400,000 in mortgage bonds to have realized funds with which to have purchased the iron and equipments.

These expectations, at the outset, were in a fair way of being realized; the State legislature passed an act relinquishing or postponing the lien of the State held on your roadbed in favor of the purchasers of your bonds, by this act your bonds were secured beyond a doubt to the purchasers, your president would have had no difficulty in disposing of the bonds had this country remained at peace, and the road would at this time have been nearly completed.

Your president visited some of the principal cities in Alabama, Georgia, and South Carolina last spring and summer, and had interviews with a good many capitalists favorable to railroad interests, who expressed a deep interest in the completion of the work and would have, under any ordinary circumstance, lent willing aid towards the completion of the enterprise, but the dark and lowering cloud of war, gathering thick and heavy in the North, ready to burst with all its fanatical fury upon our Southern borders, thus deterring capitalists from embarking in any enterprise, but the one grand object of every true and noble patriot to hurl the tyrant back to his own frozen dominions, and give us that liberty which every Southerner prizes more than life, or expend the last dime of one's wealth and drop of noble blood.

344 In the month of March last, your board finding that there was not enough of means in the hands of the treasurer, and the company not being able to comply with the provisions of the act of 1854, so as to enable them to carry on the work, they authorized your president to borrow money on the faith of the company, so as to enable them to push forward the work, and your president was fortunate enough to obtain funds from the bank of Selma and the Northern Bank of Huntsville, thus enabling the company to comply with the provisions of the act of 1854, and about the 20th of July the last installment of fifty thousand was drawn from the State, which enabled you to meet your liabilities promptly with the banks and sustain your credit.

Owing to the distracted state of the country, your board deemed it prudent, though with great reluctance, to suspend the work on the road, and at a meeting of the board in July a resolution was passed by the board to suspend the work and pay up the *the* contractors all arrears that were due them up to that time, latter part of the resolution, I am sorry to say, could not be fully complied with owing to the absence of the treasurer, who had gone to Texas on account of the ill health of his daughter, and has not yet returned; therefore your president, who had become the disbursing agent, could not obtain the means to pay them off; the only outstanding debts that are against the company are those of Messrs. Carlisle and Lewis; these gentlemen have both done you good service upon the road, and their contract ought to have been met promptly, and the board will take such steps as to have these debts liquidated shortly.

Your board can not, at this time, say when the work will be resumed, as the present state of the country has closed every avenue to a financial negotiation with capitalists for the sale of your bonds, and even if you had the cash the iron rails could not be obtained until Lincoln raises his blockade. Such being the condition of things it is likely the work can not be resumed until after peace is made.

The absence of your treasurer will account for his financial report not appearing before you. We are not able to state the exact condition of the finances of the company, but feel justified in stating that we will have ample means to meet all liabilities and will endeavor to do so in the shortest possible time.

345 Your chief engineer tendered his resignation upon the suspension of the work, which will account for no report appearing from that quarter; he states to your board verbally that the grading is nearly completed and that if iron could be had the work of track laying could commence at once.

Your board trusts that by the next annual report they will be able to show the road in active operation, but, as before stated, this will depend upon the condition of our country, and not upon any exertion which your board can make.

All of which is respectfully submitted.

S. K. RAYBURN,
President T. & C. R. R. Co.

EXHIBIT O TO TESTIMONY OF CARLISLE.

*Land deed.*THE STATE OF ALABAMA, *Marshall County:*

Know all men by these presents, That I, Samuel D. McKinney, of Marshall County, and State of Alabama, for and in consideration of the sum of six hundred dollars to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey to Hugh Carlisle, his heirs and assigns, the following described real estate, to wit:

The southwest quarter of the southwest quarter, also the southeast quarter of the southwest quarter and southwest quarter of southeast quarter, all in section 33, in township 8, of range 4 east, containing one hundred and twenty acres more or less, together with all and singular tenements and appurtenances thereunto belonging, or in anywise appertaining, to have and to hold to the said Hugh Carlisle, heirs and assigns forever.

In testimony whereof I have hereunto set my hand and seal, this 9th day of August, A. D. 1890.

Interlined before signed.

SAMUEL D. MCKINNEY. [SEAL.]

Attest:

R. W. STEPHENS.

G. B. SEIBOLD.

THE STATE OF ALABAMA, *Marshall County:*

I, S. K. Rayburn, register in chancery, do hereby certify that Samuel D. McKinney, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me this day, that being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal, this the 9th day of August, 1890.

S. K. RAYBURN,

Register in Chancery.

(Endorsed:) No.

THE STATE OF ALABAMA, *Marshall County:*

OFFICE OF THE JUSTICE OF PROBATE COURT.

Samuel D. McKinley to Hugh Carlisle.

I hereby certify that the foregoing conveyance was filed for registration in my office on 27th day of December, 1890, at o'clock m., and duly recorded the 7th day of January, 1891, in Book 8, Record of Deeds, page 169.

T. A. STREET,

Judge of Probate Court, Marshall County.

(Fee paid.)

STATE OF ALABAMA, *Marshall County:*

Know all men by these presents, That we, Samuel K. Rayburn and Sarah J. Rayburn, his wife, of Marshall County, and State of Alabama, for and in consideration of the sum of six hundred dollars, to us in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents do grant, bargain, sell, and convey to Hugh Carlisle, his heirs and assigns, the following described real estate, to wit: The southeast quarter and the east half of the southwest quarter of section 9, township 9, range 4 east, all lying in Marshall County, and State of Alabama. Together with all and singular the tenements and appurtenances thereunto belonging, or in anywise appertaining, to have and to hold the said Hugh Carlisle, his heirs and assigns forever.

In testimony whereof we have hereunto set our hand and seal this the 5th day of July, A. D., 1889.

S. K. RAYBURN. [SEAL.]
S. J. RAYBURN. [SEAL.]

STATE OF ALABAMA, *Marshall County:*

I, T. A. Street, judge of probate, do hereby certify that S. K. Rayburn and his wife, S. J. Rayburn, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day, that being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 5th day of July, 1889.

T. A. STREET,
Judge of Probate.

(Endorsed:) No.

State of Alabama, Marshall County, probate court.—S. K. Rayburn and wife to Hugh Carlisle.

348 I hereby certify that the foregoing conveyance was filed for registration in my office on the 5th day of July, 1889, and was recorded in Book R, record of deeds, page 116. This the 6th day of July, A. D., 1889.

T. A. STREET,
(Fee 65c.) *Judge of Probate, Marshall County.*

Land deed.—The Tennessee & Coosa Railroad Company.

This indenture made this 2nd day of May, A. D. 1887, between the Tennessee & Coosa Railroad Company by its president, Louis Wyeth, of the first part, and Samuel K. Rayburn, of the second part, witnesseth that the party of the first part in consideration of the sum of six hundred dollars to said company in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell and convey unto the said party of the second part the following described real estate, to wit: The southeast quarter and the east half of the southwest quarter of section nine, township nine, range four

east, all in Marshall County, Alabama. To have and to hold unto the said Samuel K. Rayburn, and his heirs and assigns forever. And the party of the first part will forever warrant and defend the title to the same to the said party of the second part and to his representatives and assigns from every claim whatever.

In witness whereof, the party of the first part has, by its president, signed and affixed the corporate seal of said company the day and year above written.

[SEAL.]

THE TENNESSEE & COOSA RAILROAD COMPANY,
By LOUIS WYETH, *President*.

Witness:

HENRY L. MILLER.

(Endorsed:)

THE STATE OF ALABAMA, *Marshall County*:

I, John D. Taylor, a notary public and ex-officio justice of the peace in and for said county, hereby certify that Louis Wyeth, president of the Tennessee & Coosa Railroad Company, whose name is signed to 349 the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand this 19th day of November, A. D. 1887.

JNO. D. TAYLOR,
Notary Public.

Louis Wyeth, Prest. T. & C. R. R. Co. Deed to S. K. Rayburn.

OFFICE OF THE JUDGE, PROBATE COURT.

THE STATE OF ALABAMA, *Marshall County*:

I hereby certify that the within mortgage was filed in this office for record on the 26th day of November, A. D. 1887, at o'clock m., and duly recorded the 2nd day of December, 1887, in book "P" of Mortgages, pages 452 and 453, and examined.

T. A. STREET,
Judge Probate Court, Marshall County.

(Fees 70c.)

Deed.

This indenture, made this 14th day of September, 1889, between W. E. Knox and wife, of the first part, and Hugh Carlisle, of the second part.

Witnesseth, that the party of first part in consideration of the sum of eight hundred dollars to W. E. Knox, paid by the party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant, quitclaim and release to the said Hugh Carlisle, his heirs and assigns, all the rights, titles and interest of the party of the first part without warranty in and to the following described real estate, to-wit:

The southeast quarter of the northwest quarter of section 1, township 12, range 5 east, in the county of Etowah, State of Alabama.

In testimony whereof, the party of the first part has signed and sealed these presents on the date above written.

W. E. KNOX. [L. S.]
A. L. KNOX. [L. S.]

Signed, sealed and delivered in the presence of, as to W. E. KNOX.

W. A. CROCHERON.

350 STATE OF ALABAMA, *Etowah County*:

I, H. W. Pickens, notary public and ex-officio justice of the peace, hereby certify that W. E. Knox and A. L. Knox, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day, that being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand, this the 14th day of September, 1889.

H. W. PICKENS,
Notary Public and ex-off. J. P.

THE STATE OF ALABAMA, *Etowah County*:

I, H. W. Pickens, notary public and ex-officio justice of the peace, hereby certify that on this, the 14th day of September, 1889, also came before me the within named A. L. Knox, known to be the wife of the within named W. E. Knox, who being by me examined separate and apart from her husband, touching her signature to the within conveyance, acknowledged that being informed of the contents, she signed the same of her own free will and accord, without fear, constraints or threats on the part of her husband.

In witness of all of which I hereunto set my hand, this the 14th day of September, 1889.

H. W. PICKENS,
Notary Public and ex-off. J. P.

Application No. 502.

GUNTERSVILLE, ALA., *July 11, 1883.*

I hereby apply to purchase from the Tennessee & Coosa Railroad Company, the southwest quarter of northwest quarter and northwest quarter of southwest quarter, section No. 3, of township No. 9, of range No. 4 east, of lands granted by Congress in aid of said road, situated in Marshall county, Alabama, containing eighty acres, more or less,

351 and I promise and agree to pay the said Tennessee & Coosa Railroad Company, or order, forty dollars due by note at one day after date, and a further sum of forty dollars, twelve months after date, and a further sum of forty dollars at two years after date, and a further sum of forty dollars at three years after date, and a further sum of forty dollars at four years after date. And on my failure to make any of said payments, the said Tennessee & Coosa Railroad Company is authorized to enter upon and take possession of said land, or sell the same, and the sums paid are forfeited to said company.

S. M. BAINS.

(Endorsed:)

Received first installment by lifting his note for forty dollars with three 20-100 dollars interest January 8, 1884.

S. K. RAYBURN, *Secretary*.

For value received I transfer and assign the within to Hugh Carlisle, this 24th day of November, 1888.

S. M. BAINS.

Attest: WM. WELLS.

EXHIBIT R TO TESTIMONY OF CARLISLE.

[Extract from the Washington Post of Wednesday, September 19, 1888.]

\$25 Reward: Lost, a minute book, property of the Tennessee & Coosa Railroad Company, on August 29 last, between Washington and Parkersville, on the Baltimore & Ohio Railroad. The finder, by writing me to Guntersville, Marshall County, Alabama, will get the above reward.

HUGH CARLISLE.

352 EXHIBIT T TO TESTIMONY OF HUGH CARLISLE.

Recollections of the transaction of the Tennessee & Coosa Railroad Company with Mr. H. Carlisle from the year 1871 up to April 2, 1888.

It was in the year 1871, about July, the Tennessee & Coosa Railroad Company entered into a written agreement with the East Alabama & Cincinnati Railroad Company, in which it was stipulated that the latter company was to fully complete the Tennessee & Coosa Railroad from Gadsden on the Coosa River, to Guntersville, on the Tennessee River, within two years from date of the agreement, and further, to issue to the stockholders in the Tennessee & Coosa Railroad Company certificates of stock in the whole line of the East Alabama & Cincinnati Railroad Company, to the extent of what was by them held in the Tennessee & Coosa Railroad Company, and further, to pay the floating indebtedness of the Tennessee & Coosa Railroad Company, amounting to about the sum of twenty-five thousand dollars. (About twelve thousand dollars of this amount was due Mr. Carlisle with the interest calculated thereon up to the latter part of 1871, I think.)

In January, 1872, Mr. Carlisle received from the East Alabama & Cincinnati Railroad Company, by its secretary and treasury, the sum of nineteen thousand dollars of the bonds of said company, endorsed by the governor of the State of Alabama, giving his receipt for the same at and for the sum of \$17,100.00, and at the same time received from them between four and five thousand dollars in cash, all of which he never has as yet accounted for to the Tennessee & Coosa Railroad Company.

I have in my possession a copy of the receipt he gave to the secretary and treasurer of the East Alabama and Cincinnati Railroad Company for the bonds so received by him, and he told me that he did receive the amount of money as above stated.

The East Alabama & Cincinnati Railroad Company went into bankruptcy, I think, in the year 1872, and under and by a decree of the court, the East Alabama & Cincinnati Railroad Company, including the

Tennessee & Coosa, was decreed to be sold to the highest bidder, and the East Alabama Railway Company became the purchasers and was placed in the possession of all its, the East Alabama & Cincinnati, franchises, including the Tennessee & Coosa, a part of which was in running order, from Gadsden to Attalla, a distance of five miles.

The Tennessee & Coosa Railroad Company, not having been notified of any of the bankrupt transactions, it being entirely ignorant in the court, it deemed it right to bring suit against the purchasers of the road at the sale of the bankrupt court, who was the East Alabama Railway Company, to regain the possession of its road, hence the Tennessee and Coosa Railroad Company brought suit in ejectment against said company in the circuit court of Etowah County, which said cause was not fully determined until about the latter part of July or August, 1885. The cause was compromised, and the road with all its equipment was turned over to Mr. Carlisle, who retained entire possession of the road from Attalla to Gadsden, receiving all the profits of the same and paying out of its earnings all expenses up to about the 2nd day of April, 1888, at which time other negotiations were being made with a party or parties in New York to take the road and complete it.

But while Mr. Carlisle had the possession of the road, he undertook and did partially construct the road from Attalla to Littleton, at the base of Sand Mountain, and the train of cars ran over it for perhaps six or eight months, and it is presumable that he spent more money on that construction than he received from the earnings of that part of the road from Attalla to Gadsden.

The Tennessee & Coosa Railroad Company does not know what amount Mr. Carlisle claimed of it, as there never was any settlement made with him. True it is he claimed quite a considerable amount, and in the month of February, 1887, Mr. Carlisle became very anxious to buy some of the lands of the company, stating among other things, that the company was largely indebted to him for services by him rendered, and that there was a possibility of Congress withdrawing the unsold lands from the company. It would be better for the company to make a sale to him, and in this way secure him and save the lands so sold from

354 being withdrawn by Congress, but in any event the sale to him should not impede the building of the road. Not very long after he had received a deed from the company, he applied for a large number of acres beyond the twenty-mile limits next to Gadsden, and proposed to pay one dollar and twenty-five cents per acre, accounting for the same on a settlement with the company.

In the month of January or February, 1888, Mr. Carlisle was requested to bring his accounts and vouchers before the board of directors, at the office of the company at Guntersville, for the purpose of making a full settlement with the company. He came at said time with his accounts and vouchers, as he said, and also brought his clerk, Mr. Mark Johnson, and the settlement was partially concurred in, but not fully entered into, when Dr. Wyeth suggested to me the propriety of getting Mr. Carlisle to make a proposition as to what amount he would take for his interest in the road and its franchises, including the lands. I interviewed Mr. Carlisle privately, and requested him to state to me what amount he would take and unload entirely, including all of his

interest in the road and reality. I meant, and I am positive I included, everything. There was considerable conversation between him and me at the time, but he eventually stated that he would take a hundred thousand dollars of the first mortgage bonds of the then newly organized company, to be delivered to him in some two or three months, and five thousand dollars in cash to be paid soon. I remarked to him: "All right, we will go to the office where the other directors are, and you make the statement to them just as you have made it to me, and I will use my efforts to get them to concede to your proposition." He made his statement before a full, or a majority of the board, just as I have stated, and I am sure they so understood him, that he made a full and complete surrender of all he claimed for the amount above stated.

In the transaction with Mr. Carlisle an error was committed in making up the minutes of the directors in this, leaving out of the agreement with Mr. Carlisle to surrender and redeem the land to the company that he had heretofore received a deed for. Dr. Wyeth made up the minutes, but I do not think or believe it was purposely done.

Mr. Carlisle came to me in a day or so, and requested me to
355 make for him a copy of the agreement, which I did and gave it to him. He left in a day or so and went to Gadsden, I believe; anyway he was not in Guntersville for some twelve or fifteen days, but on his return, he came into my office and asked me if I did not think, under the agreement as placed on the minutes of the company, he could not hold the land that had heretofore been deeded to him by the company, regardless of the agreement as entered on the minutes. After I examined the entry, I told him I thought it likely he could, in the event there was nothing further said about it. He then stated that he had interviewed an attorney, who told him that under the agreement, as set forth, he could hold the lands as deeded.

All of this was an afterthought of Mr. Carlisle's, but he some time afterwards said that he had received from someone in New York one hundred and five thousand dollars of the bonds of the company, in satisfaction of the original agreement with the company, as stated heretofore, but gave no receipt, and made no deed to the lands heretofore by him purchased of the company.

I will now here state that I am fully satisfied that on a fair settlement with Mr. Carlisle and the company he has overdrawn on the company to the amount of what all the land that was deeded to him is worth, and is not entitled honestly to one acre of it.

The president of the road, at the time the transaction above stated was entered into and who was present, was E. A. Quintard, and the directors were Windolen Siebold, Henry L. Miller, George Beggs, Hugh Carlisle, Dr. John A. Wyeth, and S. K. Rayburn.

I have stated the main circumstances that occurred in the various transactions with Mr. Carlisle as near as I can remember just now, yet there may be something that I have, at this time, not remembered, as Mr. Carlisle says he lost the minutes of the company between New York and Washington city. This possibly may be so, but not likely.

In the event I can be of further service to you please advise me.

Respectfully,

S. K. RAYBURN.

A statement of indebtedness of the Tennessee & Coosa Railroad Company on July 12, 1871.

| | |
|---|-------------|
| H. Carlisle..... | \$21,082.03 |
| L. Wyeth..... | 2,234.00 |
| R. W. Walker, for legal services..... | 101.33 |
| Gilbreath & Lusk..... | 80.00 |
| Amt. Gideon Ellis, for legal..... | 75.00 |
| R. K. Boyce, secretary..... | 200.00 |
| D. G. Lewis..... | 1,241.62 |
| Amt. due as costs in circuit court (estimated)..... | 200.00 |
| T. G. S. Cox, for cross-ties..... | 631.46 |
| G. Greenwood..... | 132.12 |
| Saml. K. Rayburn..... | 100.00 |

25,877.56

EXHIBIT V TO TESTIMONY OF HUGH CARLISLE.

[S. K. Rayburn, register.]

OFFICE OF THE REGISTER IN CHANCERY, MARSHALL COUNTY,
Guntersville, Ala., December 13, 1880.

MR. HUGH CARLISLE.

Springville, Ala.

DEAR SIR: I was handed by Hon. L. Wyeth on yesterday a letter addressed by you to him in which you state that there is a bill pending before our legislative body in which it is proposed to take from our road the land that overlaps with the Alabama & Chattanooga road and give it to said road. All I have to say about this bill is that the man's cupidity who offered such a bill overlapped good sense. If he had taken the pains to examine the act of Congress of June 3, 1856, he would have seen that the State of Alabama had nothing to do with them, only in trust. The act of Congress reads thus: "Grant public lands to the State of Alabama, in aid of the Tennessee & Coosa Railroad;" and by act of legislature of 1857-58, turned over the lands to the Tennessee & Coosa Railroad Company, and the Commissioner of the General Land Office has made the division giving to the Alabama & Chattanooga road all that it is entitled to and reserving the other part for the Tennessee & Coosa road. In short the State of Alabama has no more right to interfere in this land grant than any other State has; Congress may, but the State, never. She bereft herself of all right in said land by acts of the legislature of 1857-58. If the matter of her rights in the Alabama & Chattanooga Railroad were properly looked into it would likely be found worthless.

I notice the Louisville & Nashville Railroad has canceled the contract for the Georgia Western. It now, I presume, is the property of its first owners who are desirous of extending it in the direction of Decatur. Do you not think that if Judge Wyeth and you were to visit Atlanta and make the proper representation to the capitalists and leading men of that place the interests of our road could be advanced greatly? I am sure the effort would pay, and I believe the time propitious for the trial. I mentioned the subject to the judge, and he is alive to the move and

would willingly go on, but tells me he has not the money, and you know the condition of the company at this time. Could you not spare him the means and take the company for it? True it is, the company is largely in your debt, but I think its assets are amply sufficient to indemnify you in the future, and I hope not far. There are suggestions I have made with the hope you will give it your attention. I know the great interest you feel in the road and believe that you will leave nothing undone that will tend to advance the interest of the road. I wrote to you some time ago and directed the letter to Springville, St. Clair County, Alabama. Did you get it? I hope you will not fail to be here first Monday in January next.

Respectfully,

S. K. RAYBURN.

358 EXHIBIT W TO TESTIMONY OF HUGH CARLISLE.

[S. K. Rayburn, register.]

OFFICE OF THE REGISTER IN CHANCERY, MARSHALL COUNTY,
Guntersville, Ala., Jan'y 9th, 1885.

Maj. HUGH CARLISLE, *Atalla, Ala.*

DEAR FRIEND: Judge Wyeth and myself have just arrived home, the Judge's health is not good by any means; while in Huntsville he had a slight stroke of paralysis in the mouth, his upper lip and tongue is so affected that he can not speak plain, though he can be understood. I have just left him and think he is slightly better; he cannot be taken home on account of the high water; and I say to you, my friend, I fear our dear old friend is in a critical condition. God only knows how his disease will terminate.

Our business trip terminated satisfactorily; the Tennessee & Coosa Railroad Company has a fee simple title to the one hundred and twenty sections of land on the first twenty miles of the road and the company can make a good title to the purchaser; such is the opinion of Judge Brickell and also is the decision of the highest law court. If you can spare the time I think you had better come over soon and then matters can be put in proper shape. My health is good, but tired and cold.

Yours, truly,
(Signed)

S. K. RAYBURN.

359 EXHIBIT X TO TESTIMONY OF HUGH CARLISLE.

TENNESSEE & COOSA RAILROAD OFFICE, GUNTERSVILLE, ALA.

THE STATE OF ALABAMA, *Marshall County:*

Know all men by these presents, that I, Louis Wyeth, president of the Tennessee & Coosa Railroad Company, in pursuance of the authority vested in me by and under the direction of the board of directors of the said Tennessee & Coosa Railroad Company, do hereby certify that as appears by the settlement this day made between the said Tennessee & Coosa Railroad Company, by its board of directors, and Hugh Carlisle, lately a contractor on said road, that the said Tennessee & Coosa Railroad Company is indebted to the said Hugh Carlisle in the just and true

sum of eleven thousand, four hundred and sixty-seven dollars and sixty-one cents, to be paid to the said Hugh Carlisle on demand.

In testimony whereof, I, the said Louis Wyeth, president of the said Tennessee & Coosa Railroad Company, have hereto set the corporate seal of said company, and signed the corporate name of said company, this 20th day of December, A. D. 1869.

[SEAL.] THE TENNESSEE & COOSA RAILROAD COMPANY,
By LOUIS WYETH, *President*.

Testee:

R. K. BOYCE, *Secretary*.

(Stamps along the margin, etc.)

360 EXHIBIT Y TO TESTIMONY OF HUGH CARLISLE.

GUNTERSVILLE, ALA.,

Office of the Tennessee & Coosa Railroad Company, April 2, 1888.

For value received the Tennessee & Coosa Railroad Company promises to pay to George Beggs twelve thousand seven hundred and ninety-one 86-100 (\$12,791.86-100) dollars, with interest at eight per cent per annum until date of payment.

THE TENNESSEE & COOSA RAILROAD COMPANY,
By E. A. QUINTARD, *President*.

S. K. RAYBURN, *Secretary*.

STATE OF GEORGIA, *Bibb County*:

Personally before me comes George Beggs, who solemnly swears that the above is a correct copy of the original note held by him against the Tennessee & Coosa Railroad Company, and sent this day to Messrs. Dortch & Martin, lawyers, Gadsden, Ala., for suit.

(Endorsed:) Received April 9, 1888, twelve hundred dollars (\$1,200) on within note. Note of George Beggs.

EXHIBIT Z TO TESTIMONY OF HUGH CARLISLE.

[Copy of original.]

One day after date I promise to pay George Beggs the sum of twelve thousand six hundred and sixty-five 21-100 dollars borrowed money.

(Signed)

HUGH CARLISLE,

General Manager T. & C. R. R. Co.

GADSDEN, ALA., *February 1, 1888.*

361 *Testimony of J. A. Saunders.*

Mr. J. A. SAUNDERS, being duly sworn, testified as follows:

Examined by Mr. GOODHUE:

Q. Did you know General Raburn in his life time?

A. Yes, sir.

Q. Did you know his handwriting?

A. Yes, sir.

Q. See him write?

A. Yes, sir.

Q. Have you ever seen among Mr. Carlisle's papers a statement of the indebtedness of the Tennessee & Coosa Railroad Company to Mr. Carlisle?

A. Yes, sir.

Q. When did you see it?

A. In February last.

(Objected to by counsel for the Government, because it only purports to show the mere statement of Raburn and is not binding upon the Tennessee & Coosa Railroad Company, and is in the nature of hearsay evidence.)

Q. Was that statement in Rayburn's handwriting?

A. It was.

Q. Give the contents of that statement?

A. I don't remember what it contained; it was a statement of work done by Major Carlisle in 1860 and 1861, up to January, 1880; the footing was \$32,326.76.

(Objected to by same counsel for same reason as above.)

Q. How can you remember these figures?

A. By performing clerical services for Mr. Carlisle I saw this amount, or about that amount, in a statement made by Mr. Johnson, Mr. Carlisle's former bookkeeper. I then called his attention to this matter, and asked him if it would not be of considerable importance to keep. He said it would, and we put it with other papers of importance. I have not seen that paper since that time.

362 Q. Was that a statement of work done in 1860 and 1861, and run up to January, 1881?

A. That was for work done up to that time.

Cross-examination by Mr. WHITE:

Q. What sort of work was that?

A. I don't remember that it stated; this was a statement made out by Mr. Raburn, in his own handwriting; it was for services rendered by Major Carlisle.

Q. How do you remember that particular paper?

A. I made out a statement for Major Carlisle and that item was the beginning of the statement.

Q. How do you remember that was for work done in 1861?

A. It specified it.

Q. How do you recollect that?

A. By charging my memory with it.

Q. Do you remember what time in 1860 it began?

A. I do not.

Q. When it closed?

A. No, sir. There were a considerable number of items; about three or four pages of legal cap.

Q. Where did you find that paper?

A. Among other papers of Major Carlisle's. I found it in a large casket or chest, among a lot of other papers. Major Carlisle asked me to get it and all other papers that had anything to do with any transactions between him and the Tennessee & Coosa Railroad.

Q. What is your business now?

A. I am working for Major Carlisle.

Q. How long have you been with him?

A. About two years; I am doing his clerical work.

Q. Where do you live?

A. At Guntersville.

363

Decree made September 29, 1894.

In the circuit court of the United States, southern division of the northern district of Alabama.

| | | |
|--------------------------------------|---|--------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY | | |
| et als. | | |

The above stated cause is set down for trial by agreement of all parties on the 20th day of November, 1894, on which day counsel for any and all parties interested may appear before the judge of this court at Montgomery to argue their case. It is agreed in open court by counsel representing all parties to this suit that the decree when rendered shall be of the same effect as if rendered in term time.

(Signed)

JOHN BRUCE, *Judge.*

(Endorsed:) Filed Sept. 29, 1894. N. W. Trimble, clerk.

Minute entry of September 16, 1895.

| | | |
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| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY | | |
| et als. | | |

Come the parties by solicitors, and by agreement this cause was set down for Tuesday, Oct. 1.

364

Additional grounds of demurrer of Hugh Carlisle.

In the circuit court of the United States for the southern division of the northern district of Alabama.

| | | |
|---------------------------------------|---|--------------------|
| UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY, | | |
| Hugh Carlisle, et als. | | |

Now comes Hugh Carlisle and assigns the following additional grounds of demurrer to the original bill filed in above stated cause.

Seventh. Said bill fails to show that any fraud was attempted or practiced upon, or any mistake made by the Interior Department in regard to the certification of the land in controversy.

Eighth. Said bill charges no bad faith on the part of Carlisle, other than the fact that he knew that the railroad had not been constructed within ten years after June 3, 1856.

Ninth. Said bill is too uncertain, vague, and indefinite in its allegations as to the secret trust under which Carlisle is alleged to hold the lands.

Tenth. Said bill fails to show the nature of the secret trust under which Carlisle is alleged to hold the lands.

Eleventh. The bill shows on its face that part of the lands in controversy are included in the 120 sections authorized to be sold in advance of the completion of any part of the road, and remainder is opposite to and coterminous with that portion of the road which was completed and in operation at the date of the passage of the forfeiture act.

And Hugh Carlisle also demurs specially to that portion of the bill which seeks to forfeit and resume title to the first 120 sections 365 authorized to be sold under the terms of the granting act of June 3, 1856, on the ground that the grant of said 120 sections was and is absolute and unconditional and not subject to forfeiture.

And said Hugh Carlisle also demurs specially to that portion of said bill which seeks to forfeit and resume title to that portion of the land which was completed and in operation on the 29th day of September, 1890, on the ground that by the terms of the forfeiture act, this land was excepted from the forfeiture.

(Signed)

GOODHUE & SIBERT,
Solicitors for Carlisle.

(Endorsed:) Filed September 26, 1895. N. W. Trimble, clerk.

366 *Testimony of W. W. Curry.*

In the United States circuit court for the southern division of the northern district of Alabama.

| | | |
|--------------------------------------|---|--------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY | | |
| et als. | | |

CLERK'S OFFICE, U. S. COURTS,
Birmingham, Ala., Sept. 25, 1895.

Pursuant to notice, the examination in the above entitled cause was resumed on the above named date at the office of the examiner at 10 o'clock a. m., and the following proceedings were had:

Present: N. W. Trimble, examiner; Frank S. White, esq., attorney for the Government; Amos E. Goodhue, esq., attorney for Hugh Carlisle.

MR. W. W. CURRY, on behalf of the Government, being duly sworn, deposes and saith as follows:

Examination by MR. F. S. WHITE:

Q. Do you know Major Hugh Carlisle, one of the defendants in this suit?

A. Yes, sir.

Q. State whether or not, Mr. Hugh Carlisle at Guntersville, about 1891, on the verandah or porch in front of the hall of the court house, said that the Tennessee & Coosa Railroad Company owed him about \$85,000 or \$86,000, and that the Nashville, Chattanooga & St. Louis Company had assumed it, and that he did not care if he lost the suit, that is the land in this suit, that he was secured anyway, and that he would rather have the money he would get from the Nashville, Chattanooga & St. Louis Railroad than the land?

A. Yes, sir; he said that. If not in those exact words, it was that in substance.

367 Q. Did you know S. K. Rayburn, at one time secretary of the Tennessee & Coosa Railroad Company?

A. Yes, sir.

Q. Did you know him intimately, or well?

A. Yes, sir.

Q. In the spring of 1887, what official position, if any, did you occupy, and what did he hold?

A. My position was clerk of the circuit court of Marshall County. Mr. Rayburn's position was register in chancery of the same county.

Q. Was he or not then secretary of the Tennessee & Coosa Railroad Company?

A. Yes, sir.

Q. Did the company not have an office, or keep its papers in his office of register in chancery, at that time?

A. I don't know that I can answer that question. Some of the papers were kept there, if not all. I do not know what papers were kept there.

Q. Did you know Judge Louis W. Wyeth?

A. Yes, sir.

Q. Did you know him well?

A. Yes, sir.

Q. Did you know his handwriting?

A. I do not know whether I can testify to his handwriting or not. He did not write very much in the days that I knew him, because he was near-sighted, or his sight was defective one way or another.

Q. Do you know his signature when his name is signed?

A. Yes, sir, I think I would know it. I would hate to swear positively to handwriting.

Q. Did you ever see him write his name?

A. Yes, sir.

Q. Well, from having seen him write, would you know his signature?

A. Yes, sir.

368 Q. In the spring, say about the early part of February, 1887, did you not see a resolution purporting to be passed by the directors of the Tennessee & Coosa Railroad Company relating to the conveyance of about 23,000 acres of land to Hugh Carlisle?

A. Yes, sir; I saw such resolution.

Q. Whose names were signed to that resolution?

A. Louis Wyeth, as president, and S. K. Rayburn, as secretary.

Q. President and secretary of what?

A. I don't know.

Q. I mean, did it say on the paper?

A. I don't think it did.

Q. Were the signatures to that resolution in the genuine handwriting of S. K. Rayburn and Louis Wyeth?

A. My recollection is they were.

Q. Who showed you the resolution?

A. S. K. Rayburn.

Q. In what office?

A. In the office of the register in chancery of Marshall County.

Q. Is that the same office in which you say some of the papers of the Tennessee & Coosa Railroad Company were kept?

A. Yes, sir.

Q. State the purport, as nearly as you can, of the contents of that resolution.

A. The resolution covered nearly a page, and it may be hard for me to give the wording of it or anything like it: "Resolved, by the board of directors of the Tennessee & Coosa Railroad Company, that the president be authorized to convey to Hugh Carlisle twenty-three thousand and odd acres of land at the rate of \$2.50 per acre, amounting in all to fifty-nine thousand and odd dollars, to be accounted for to the company on a future settlement by Hugh Carlisle." That about takes the substance of the resolution, as I remember, except the signatures.

Q. Do you remember whose handwriting the body of that resolution was in?

A. No, sir, I do not.

Q. Were you acquainted with the lands involved in this suit in February, 1887?

A. Yes, sir.

369 Q. Did you know the fair market value of these lands?

A. I knew the fair market value of lands lying contiguous to these lands.

Q. Were the lands lying contiguous the same kind of lands?

A. Yes, sir.

Q. Were these lands worth as much as the lands lying contiguous?

A. Yes, sir.

Q. What was the fair market value of the 17,410.33 acres conveyed by the Tennessee & Coosa Railroad Company to Hugh Carlisle on the 4th day of April, 1887?

A. I don't know that I could say as to the 17,000 acres; that was at the other end of the road, so I have been informed.

Q. Look at the townships and see if you can tell?

(Witness is here handed a book, which he examines.)

A. I don't know anything of these lands.

Q. I will ask you then to state, if you know, the fair market value of the 23,739.51 acres of land conveyed by the Tennessee & Coosa Railroad Company to Hugh Carlisle on the 7th day of February, 1887.

A. I think I do, with the exceptions of township 10, range 5, and township 9, range 5.

Q. State what the value is.

A. The average value is \$5 per acre.

Q. Then these lands conveyed in that last named deed, with the exceptions made in your answer, the average value of them would be five dollars?

A. Yes, sir.

Q. Did you know about the number of settlers on these lands in February, 1887, and also on the 17,000 acres, that is to both pieces?

A. No, sir; I do not know anything about the settlers on the 17,000 acres at all.

Q. Of the 23,000 acres that you just last mentioned?

A. Yes, sir; I know the settlers.

Q. About how many on the deed conveying the 23,739.51 on the 7th of February, 1887?

370 A. These lands are very sparsely settled, except from lying immediately along the line of railroad. I suppose there must have been some 200 settlers on these lands.

Q. What population?

A. One thousand, I reckon.

Q. Is that about the number of settlers and population on them now? Yes, sir; to the best of my knowledge, about the same.

Cross-examination by Mr. GOODHUE:

Q. These settlers on the lands were mainly men who had purchased from the Tennessee & Coosa Railroad Company?

A. That is my information.

Q. And these purchasers, Mr. Curry, were made at \$2.50 per acre, were they not?

A. All that I ever saw were.

Q. Isn't it a fact that the land was on the market for \$2.50 an acre?

A. No, sir.

Q. When was it withdrawn?

A. I could not say as to when it was withdrawn.

Q. Don't you know of purchases made in 1884 or 1885 less than \$2.50 an acre?

A. I don't think I saw a certificate made as low as that.

Q. How long had these settlers that purchased been living on that land?

A. From 1886 on to the present time.

Q. You first knew these lands in 1886?

A. Some of them I was familiar with before that time.

Q. Do you know how far these lands run out from the railroad on either side, taking it as a base line?

A. I know how far the grant extends.

Q. How far these lands extend in the deed to Hugh Carlisle?

A. By reference to the particular section of land I could approximate it very closely.

371 Q. Could you tell without reference to the deed?

A. No, sir.

Q. Do you know whether any of these lands are lying in Blount County or not?

A. No, sir.

Q. Do you know whether any of them lie in DeKalb County or not?

A. I do not.

Q. Do you know whether all these lands are within six miles of the center of the railroad or not?

A. I do not, without reference to the deed.

Q. Then in putting in your values, did you put it on the basis of lands lying within six miles of the railroad?

A. My basis is extended further in putting the valuation on it.

Q. What is this land good for?

A. For timber, mineral, agriculture, quarries, and horticulture.

Q. These settlers in 1887, they had begun to claim adversely to the railroad company, didn't they? They tried to enter the lands for themselves?

A. No, sir.

Q. A large part of these lands had been contracted for by the railroad company to purchasers at \$2.50 per acre?

A. Some of them I am satisfied were in that condition; I can not say that all were.

Q. You can not say whether a large or small part?

A. I can say that a large part of them were contracted for at \$2.50.

Q. The persons in possession of this large part hold the obligation of the Tennessee & Coosa Railroad Company to convey to them upon the payment of \$2.50 per acre? That is true, is it not?

A. Yes, sir.

Q. These lands held in that way were the most valuable that was on the market, were they not?

A. The market value depended upon the improvements on the land.

372 Q. These were the improved lands held mainly?

A. Yes, sir.

Q. Take the other lands—the unimproved lands; their market value was less than \$5 an acre, taken as a body?

A. Yes, sir.

Q. Now, when you speak of market value of lands, is it not a fact that you determine it by the value of small tracts of lands?

A. Such of the ones as I was familiar with.

Q. Is it not a fact that you could not say, taking the whole body together, that it was not worth more than \$2.50 an acre?

A. No, sir; could not say that would be full value of it.

Q. When you take into consideration the difficulties that existed there, getting possession of these lands, you say that was less than the fair market value of the land?

A. Yes, sir. As an average it was less than that. There were some isolated tracts that were worth less and some more than \$2.50 an acre. When I gave \$5.00 as an average, it was with the view of comparing the most valuable with the less valuable, and striking an average.

Q. Have you made any examination of these lands to know where they are?

A. At the time the deed was presented to me, I did, in 1887.

Q. You went over the lands?

A. You mean, did I go in person? No, not then.

Q. Have you ever been in person on the lands?

A. A great many of them I have; some of them I have not; some of them were inaccessible.

Q. Do you know where the south half of the southeast quarter, section 23, township 8, range 2 west is?

A. I know in the neighborhood of it.

Q. Do you know who lives on it.

A. No, sir.

Q. Is it improved or unimproved?

A. I don't know.

Q. Ever been on it?

A. I don't know that I have.

373 Q. Do you know whether it is on a public road?

A. I do not.

Q. Do you know anything it is good for?

A. No, sir.

Q. Do you know the south half of section 35, township 8, range 4?

A. I don't think I do. I may have been on it for all I know. I can not say whether it is rich or poor. Unless I had a map I could not answer questions of that sort.

Q. You say you made some examination in 1877 of these lands?

A. I frequently traveled over them. Traveled on the public and private roads.

Q. Do you know what the assessed valuation of these lands is as given in by Major Carlisle in Marshall County?

A. No, sir; I do not.

Q. Do you know who these parties are that employed Mr. White in this case? What relation have they in the matter? Is it not a fact that the men who have employed Mr. White in this case are the purchasers from the Tennessee & Coosa Railroad Company of these lands?

A. Yes, sir.

Q. And they are prosecuting this case, are they not, through Mr. White, in order to obtain the entry of these lands without paying the purchase-money notes given therefor.

A. Yes, sir.

Q. And you, about 1890, wrote several letters to the Department on behalf of these parties to procure the filing of this bill?

A. No, sir; not that I remember of.

Q. Or wrote several letters to the Department in regard to these lands?

A. I possibly may have done that. With reference to the filing of this bill, I did not.

Q. You know Rayburn's handwriting?

A. Yes, sir.

Q. Is that Rayburn's handwriting?

(Witness is here handed a paper to examine.)

A. If it is, it dates back of any knowledge of mine. I never saw his handwriting that was anything as good as that is. I do not know whether this is his handwriting or not.

Q. When you were in the office there, did you see anything of a receipt from Carlisle given for so much money on account of these lands?

A. I don't know whether that was there or not.

Q. Did you see a copy there? Were you interested in anything there?

A. No, sir; only on general principles.

Q. Explain these general principles that you were interested in?

A. The questions of dispute that might be settled in accordance with right and justice.

Q. Did you have any dispute in regard to these lands?

A. I did not; I held no possession of lands, and claimed none.

Q. What disputes were existing then in regard to them?

A. With reference to the right of the Tennessee & Coosa Railroad Company to the lands, as to whether they had earned them according to the grant or not?

Q. When you say that, that resolution was not in this language?

A. That does not embrace the whole of it. It embraces only a part of it. It had Louis Wyeth's name to it.

Q. Did you not see at the same time this paper?

A. I did not see any receipt.

Q. Did you see the minute book?

A. No, sir.

Q. In whose handwriting was the body of the paper?

A. I don't know.

Q. Did it show who offered the resolutions?

A. Possibly it did. I do not remember distinctly as to whether it did or not.

Q. Did it show whether the resolution was passed or not?

A. Yes, sir.

Q. How did it show that?

A. In my direct I gave as near the substance as well as I could.
375 It would be too long for me to recollect the names of all who were there in the resolution, but the purport of the resolution is all that I charged my memory with.

Q. Can you give it again?

A. I can give the substance.

Q. Well, give it?

A. That the president of the Tennessee & Coosa Railroad Company be authorized to convey to Hugh Carlisle 23,000 and odd acres of land at \$2.50 per acre, amounting to \$59,000 and odd dollars, to be accounted for to the railroad company by Hugh Carlisle on a future settlement.

Q. Is that all there was of it?

A. No, sir; that was not all. It covered nearly a page of foolscap. That was about all the material substance of it. Possibly there might have been the names of the board of directors and the mover in it. It had the name of Louis Wyeth on the bottom of it, and also the name of S. K. Rayburn, secretary.

Q. You have not seen it from that day to this?

A. No, sir.

Q. Don't know whose handwriting it was in?

A. No, sir.

Q. Don't know who was the mover of the resolution, nor who voted on it?

A. No, sir; I would not swear that any words passed upon it.

Q. Would you know that paper if you were to see it?

A. I don't know whether I would.

Q. Do you remember Mr. Beck's name being mentioned in that resolution?

A. I don't think I do. I don't remember the names, except those that I mentioned.

Q. Was it before or after this that the conversation occurred with Major Carlisle, in which he stated that the Nashville, Chattanooga & St. Louis Railway Company was responsible for that debt anyway?

A. It was long after that.

Q. What were you talking about at the time this conversation came up?

376 A. Talking about this bill that had been filed. It was very shortly after it had been filed.

Q. He told you that he held a warranty title from the railroad company?

A. Not in that conversation.

Q. What did he tell you?

A. In front of the court-house, at Guntersville, he said that it did not matter much with him whether he lost his case or not; that the Nashville, Chattanooga & St. Louis Railway Company had assumed the payment of the indebtedness of the Tennessee & Coosa Railroad Company, and that he would get his money if he lost his case; that was substantially all.

Q. Was any amount mentioned?

A. Yes, sir.

Q. What did he say about the amount?

A. The amount mentioned was \$85,000 or \$86,000 due him.

Q. Was there any one else present at that conversation besides you and Major Carlisle?

A. I don't remember that there was.

Q. Your son is one of the parties in possession of quite a lot of this land, is he not?

A. He is in possession of 160 acres of it.

Q. In what way did he acquire his possession?

A. By transfer of the purchase certificate to him.

Q. He has not paid the purchase money?

A. No, sir.

Q. Your son-in-law also has a body of this land?

A. I have several sons-in-law; unless you specify which one, I can't say.

Q. A man by the name of Brown?

A. He is in possession of a small body of this land. I think he was in possession of an eighty in 1890.

Q. How did he get it?

A. I don't know.

Q. Do you know of any moneys that the Tennessee & Coosa Railroad Company had after the war, except what was furnished by Major Carlisle?

A. I don't know what they had financially.

377 Q. You know of Major Carlisle working on that road in 1885?

A. No, sir; I don't know of that.

Q. Did you know there was any work done on that road?

A. No, sir. I was on the other end of the road, where no work was done. I was not down about Littleton.

Q. How many bodies of this land have you been on, so as to know its value?

A. I can not tell you.

Q. What is the value of the land?

A. You mean its value now?

Q. The value in 1887?

A. It ranges from \$2.50 to \$5.00 per acre.

Q. Was it greater in 1887 than it is now?

A. I think it was.

Q. Was it more in 1887 than in 1886?

A. About the same.

Q. Was it more in 1887 than in 1885?

A. I was not so familiar with it then as I was later on. At that time I knew little or nothing at all of the cash value of lands in Marshall County.

Q. When did you begin to know about the cash value of lands in Marshall County?

A. In 1886 and 1887.

Q. What experience did you have in that line to know?

A. In 1886 I was a candidate for clerk of the circuit court, and traveled the county back and forth in every direction from month to month, which gave me a general idea of the geography and topography of the country; and in 1887, after becoming clerk of the court, acknowledgements were taken before me of deeds in different locations of the county, which gave me an idea what they were selling for, and passing from one to another, and from this and that sort of experience, together with frequently traveling over it and seeing the improvements going on.

Q. You have never dealt in lands—bought and sold them?

A. I am selling lands now; but at that time I did not.

378 Redirect examination by Mr. WHITE:

Q. In your cross-examination you state that these lands were selling at \$2.50 per acre. I will ask you to state if it was not simply the title of the Tennessee & Coosa Railroad Company, which was in dispute, that put that amount on it, and if a perfectly good title would not have brought more?

A. I do not remember having said that they were selling at \$2.50 per acre, except the lands sold by the Tennessee & Coosa Railroad Company to the settlers, according to their certificates.

Q. I will ask you whether or not a perfect title would not have brought more than a title from the Tennessee & Coosa Railroad Company.

A. I think it would; a fair title would always bring more money than a disputed title.

(Endorsed:) Filed September 26, 1895. N. W. Trimble, clerk.

379

Testimony of W. W. Curry, jr.

W. W. CURRY, jr., being duly sworn on behalf of the Government, deposes and says as follows:

Examination by Mr. WHITE:

Q. Are you familiar with the lands in controversy in this suit?

A. Yes, sir.

Q. You live in Marshall County?

A. Yes, sir.

Q. Near the most of these lands?

A. Yes, sir.

Q. How long have you lived there?

A. Ever since 1881.

Q. Have you been engaged in cultivating lands?

A. Yes, sir.

Q. Do you know the value of these land' in February, 1887?

A. I know about the value.

Q. I mean a fair market value.

A. Yes, sir.

Q. What was the fair average market value of these lands involved in this suit at that time?

A. Along through my section of the country—I live about middle ways of these lands on the mountain—the deeded lands were selling at that time, through that section, from \$6 to \$10 an acre; it was according to the locality; that is, improved lands.

Q. What would be the average value, taking these lands together, the improved and unimproved?

A. I suppose from \$4 to \$5 an acre.

Q. Are you familiar, or know anything about the population and number of people on these lands? Have you been over the lands much?

A. Yes, sir; frequently.

Q. Do you know about the number of settlers?

A. I suppose about five or six hundred.

Q. What is the population?

380 A. I suppose it would average about four or five to the family. That would make it about three thousand.

Cross-examination by Mr. GOODHUE:

Q. You are chairman of a committee, are you not, in the prosecution of this suit, through Mr. White?

A. Yes, sir.

Q. These settlers on the land are mostly purchasers from the Tennessee & Coosa Railroad Company?

A. A great many of them have certificates; I don't know whether they all have or not.

Q. You have?

A. Yes, sir.

Q. Agreement to convey the land on payment of \$2.50 an acre?

A. Yes, sir.

Q. You have not paid that?

A. No, sir.

Q. You are seeking to get the land through the Government without paying that \$2.50?

A. Yes, sir.

Q. That is the case with all you represent?

A. Yes, sir.

Q. Can you state how many acres of this land is improved, and how many unimproved?

A. No, sir; I could not state that.

Q. Do you know whether that 23,000 acres of land embraces all the

lands of the Tennessee & Coosa Railroad Company, or whether there are lands not embraced in it?

A. Pretty nearly all of the odd sections are claimed by Carlisle. I don't know whether they are embraced in this deed or not.

Q. Do you know whether any of these lands are wild lands, in timber and rock?

A. Some are on the break of the mountain, and not fit for cultivation.

381 Q. They are worthless?

A. Good for timber.

Q. Is there not a great deal of Government land on sale at \$2.50?

A. I don't know of any.

Q. Is it not a fact that there are a great many entries being made on that land yet?

A. I have not heard of any land being entered in some time. In my section of the country it is all taken up.

Q. You could not say how much of this land was unimproved?

A. No, sir; I would not know how to approximate it.

Q. How long have you lived where you are now?

A. I have been living there ever since 1881. Not exactly in the same place where I am now, but at the adjoining farm.

Q. How did you buy?

A. I just bought a man's claim; I gave him \$300 for it. I have 150½ acres; it was improved land.

Q. Had a house on it?

A. Yes, sir; a small house on it.

Q. The most valuable part of this land is improved land?

A. Yes, sir.

Q. And most of the improved lands are in the possession of these people you speak of?

A. Yes, sir.

Q. Most of these people hold from the Tennessee & Coosa Railroad Company?

A. A great many of them.

Q. I will ask you whether the trains were operated on the railroad from Gadsden to Guntersville before the filing of this bill?

A. My recollection is that they were.

Redirect examination by Mr. WHITE:

Q. Were the trains running on September 29, 1890, at the time the forfeiture act was passed?

A. They were not running then.

382 Q. Did you ever notice the construction of that road out from Attalla to Littleton before the Nashville, Chattanooga & St. Louis Railroad got hold of it?

A. Yes, sir; I traveled over it.

Q. How was it? was there any grading done, or was the old grading used?

A. The old grading was mended.

Q. Was there much done on it or not?

A. I don't remember.

Q. What sort of cross-ties were put on it?

A. A good many of them of old field pine.

Q. What kind of rails?

A. The rails must have been old rails. I suppose they were second-hand.

Q. Were they light?

A. They were not as heavy as the ones used now.

Q. What, in your judgment, would it cost to put the improvements on the road by Maj. Carlisle, from Attalla to Littleton, outside of the iron?

A. I was never a railroad man, and would hardly know how to approximate it.

(Counsel for defendant objects to the question, because it is not shown that the witness is competent to answer.)

Q. Give your best judgment.

A. I suppose the work from Littleton to Attalla could have been put through for six or seven thousand dollars.

Q. Was there anything done to the old road bed except to right it up?

A. Not much.

Q. And you say the cross-ties were mostly old field pine?

A. Yes, sir.

Q. Was there any grading done at all; any fills made; anything of that kind?

A. I do not know of any, but what was already done.

Q. What was the condition of the road after Carlisle put it down, before the Nashville, Chattanooga & St. Louis Railroad got hold of it?

383 A. When the work was first done it was in good condition; I rode over the road on trains.

Q. Was it smooth and firm, or was it otherwise?

A. It was not very firm; it was a little rough; not as smooth as it is now.

Q. Did they continue to operate the road up to the time the Nashville, Chattanooga & St. Louis Railroad got hold of it?

A. It stopped operation.

Q. When did it stop?

A. I could not say the exact date; about 1888.

Q. How long was it operated?

A. It was operated about two years.

Q. When was it operated out to Littleton from Attalla? When was it first put in operation?

A. Somewhere about 1885 or 1886.

Re-cross examination by Mr. GOODHUE:

Q. The Nashville, Chattanooga & St. Louis Railroad put it in operation since they got it?

A. Yes, sir.

Q. They ran trains out, getting cotton out from Littleton?

A. No, sir; they never hauled any cotton until the road was fully completed. They put in new steel rails.

Q. They commenced that in the fall of 1889?

A. I don't remember the exact date they commenced.

Q. Do you know what Major Carlisle did to the bridges on Willis Creek?

A. I know that he put in some bridges.

Q. Do you know what it cost to put in these bridges?

A. No, sir.

Q. Did you include that in your estimate just now?

A. I suppose I did.

Q. And you did not have any idea what that was worth?

A. I could not tell you.

Q. It crosses Lime Creek twice?

A. Yes, sir.

Q. Major Carlisle put those bridges there?

384 A. Yes, sir.

Q. Do you know what they cost?

A. No, sir.

Q. Isn't there a big trestle just before you go into the cut at Littleton?

A. Yes, sir; a long trestle.

Q. That trestle is about 300 feet long, is it not?

A. About 250 or 300 feet.

Q. Is there not a big cut there after you leave trestle?

A. Yes, sir.

Q. Did not Major Carlisle hammer away at that cut a long time?

A. Yes, sir; he had some work there.

Q. It was hard rock?

A. Yes, sir.

Q. He made quite a cut in that rock?

A. Yes, sir.

Q. Ain't that cut as much as 70 feet deep?

A. I don't know; I think it is about 50 or 60 feet.

Q. Is it not a fact that the railroad crosses Lime Creek thirteen times?

A. No, sir.

Q. You have no experience of railroad building and prices of those things?

A. No, sir; never built any railroad. I am a farmer, and have been engaged in that business.

By Mr. WHITE:

Q. How far into that cut did Carlisle go? that rock cut that you speak of?

A. I would suppose about 15 or 20 feet.

Q. These bridges that cross Lime Creek are very short, wooden trestles?

A. Yes, sir.

Q. Any expensive bridging on any of it?

A. No, sir.

(Endorsed:) Filed September 26, 1895. N. W. Trimble, clerk.

385

Application for writs of assistance.

| | | |
|--|---|--------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE & COOSA R. R. CO., HUGH Carlisle, et als. | | |

Whereas, Owen T. Holmes, as receiver, has obtained an order from the United States circuit court for the southern division of the northern district of Alabama for a writ of assistance, to issue to the United States marshal, directing and commanding him to assist the said Owen T. Holmes, as receiver, in obtaining possession of the herein-described lands, same being mentioned in the original bill of the above-described case, and occupied by the following-named persons, who refuse to meet and pay same; said lands being as follows, viz:

Henry L. Miller, north half of southwest quarter, section 19, township 8, range 4 east.

T. B. Lusk, south half of southwest quarter, section 19, township 9, range 4 east.

And ejecting therefrom the said Henry L. Miller and T. B. Lusk from the above-described land, and to place the said Owen T. Holmes in the full possession of the same.

(Signed)

OWEN T. HOLMES, *Receiver.*

Personally appeared before me, W. T. McCord, mayor of Albertville, Owen T. Holmes, who is known to me, who being duly qualified, solemnly affirms to and subscribes to the truth of the above statement here and in my presence.

(Signed)

W. T. McCord,
Mayor of Albertville, Ala.

(Endorsed:) Filed September 28, 1895. N. W. Trimble, clerk.

386

Testimony of W. H. Denson.

| | | |
|---------------------------------------|---|--------------------|
| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY. | | |

In the United States circuit court for the southern division of the northern district of Alabama.

BIRMINGHAM, ALA., *Sept. 28, 1895.*

In the above-entitled cause, it was agreed, by and between F. S. White, esq., counsel for the United States, the plaintiff, and Amos E. Goodhue, esq., counsel for the defendants, that the testimony or statement of W. H. Denson be taken this day at the office of F. S. White, esq., in the city of Birmingham, Ala., and that the same be used in evidence in the above-entitled cause on behalf of the defendants.

TESTIMONY OR STATEMENT OF W. H. DENSON.

Examination by Mr. GOODHUE:

Q. Do you know about the purchase of the lands by Major Carlisle from the Tennessee & Coosa Railroad Company?

A. I know about it in this way: From 1880, 5th day of June, during all the time that the Tennessee & Coosa Railroad Company operated their road, and all the time that Carlisle had charge of it, I was an attorney for the railroad company. I know, as a fact, that the railroad company owed Carlisle a large sum of money, over \$100,000. I know that, upon my advice, they executed to Carlisle an instrument, which you have here, appointing Carlisle general manager according to the terms set forth in said instrument, telling him to commence litigation for the recovery of this railroad and to build it. After the litigation had ceased in recovering the railroad from the East Alabama & Cincinnati Railway Company, there was a disposition manifested on the part of the Tennessee & Coosa Railroad Company to pay Carlisle what it owed him; they made an arrangement with Carlisle by which Carlisle was to take some
387 land in payment of a part of the debt that was due him; how many acres, just now, I don't know; it may be twenty thousand acres or over twenty thousand—anyway, somewhere in that neighborhood. The railroad company made a proposition to Carlisle to give him this land at \$2.50 an acre; that was the price agreed upon. Carlisle asked me about it, and saw Judge Wyeth, and also Judge Rice, who was then representing the Tennessee & Coosa Railroad Company. I was the general counsel and he was the advisory counsel. Judge Rice and myself advised that that transaction could not take place unless by action of the board of directors passing a resolution embodying the transaction, and authorizing the president to execute a deed to Carlisle for the land at the rate of \$2.50 an acre in payment of the debt as far as the land would go, at the rate of \$2.50 an acre.

Carlisle left Gadsden and went to Guntersville. I told him to get the directors to pass that resolution. He brought me the information from the board of directors, with authority from Judge Wyeth, who was the president, to draw a deed embodying the facts stated in that resolution. Carlisle had the resolution passed by the board of directors. That resolution was in the handwriting of Louis Wyeth, president, and certified by Samuel K. Rayburn, as secretary and treasurer. Carlisle gave me that resolution and told me to draft the deed that he now has for the land, at the request of Judge Wyeth, the president of the company. I was at my home and wrote that deed in my sitting room, with that resolution before me. The contents of that resolution, as I recollect it, was substantially as follows: "The Tennessee & Coosa Railroad Company being indebted to Hugh Carlisle, in part payment for the debt hereby authorize and empower Louis Wyeth, the president of said Tennessee & Coosa Railroad Company, to convey to said Hugh Carlisle so many thousand acres of land, somewhere in the neighborhood of twenty thousand, at the rate of \$2.50 per acre."

Afterwards, having litigation for Carlisle with the Nashville, Chattanooga & St. Louis Railroad on a bill filed by them, I saw that deed written by myself, which was executed by Louis Wyeth, as president of the Tennessee & Coosa Railroad Company. That is all I know about it.

388 (Counsel for the Government objects to the witness testifying to the contents of the resolution and deed, because it is secondary evidence.)

Q. Was there anything said in that resolution to the effect that the lands were to be accounted for by Carlisle in any way to the railroad company?

A. If there was I have no recollection of it.

Q. I will ask you if there was any trust or reservation of any interest on the part of the Tennessee & Coosa Railroad Company?

A. None whatever; it was a fair and square out transfer of land; the number of acres, I can not exactly state; to pay as far as it would to the debt. I would like to state the whole transaction: This property has been transferred by the conditional deed of the Tennessee & Coosa Railroad Company to East Alabama & Cincinnati Railway Company. The East Alabama & Cincinnati Railway Company went into bankruptcy. That was a conditional deed as to the vesting of title. Carlisle, with his own individual money, employed Samuel E. Rice and myself to bring suit to recover that property. It had lain there without anybody paying attention of erection from the date of that bankrupt sale to 1880, some five or six years or more. Carlisle employed Rice and myself, and we both told Carlisle that we looked to him for the payment of our fees, which, verbally, he agreed to see paid. We prosecuted that litigation to a successful termination in favor of and recovery to the Tennessee & Coosa Railroad Company, and secured to that company the possession of its railroad from a point on the Tennessee River to a point on the Coosa River, as laid down on the map of its survey. Judge Wyeth attended the trial of that case. Samuel K. Rayburn also attended the trial of that case. In a conversation between Carlisle, Rayburn, Judge Rice, and Denson, the question of indebtedness of the Tennessee & Coosa Railroad Company to Carlisle for building that railroad prior to the war came up, and also the discussion of the expenses that Carlisle had undertaken individually for the recovery of that railroad in this litigation. I can not now tell the amount that was there said by

389 Wyeth, Rayburn, and Carlisle that the railroad company was due to Carlisle, but it was somewhere between seventy-five thousand and one hundred thousand dollars. Judge Wyeth put the question to Judge Rice and Mr. Denson: Gentlemen, can we pay Mr. Carlisle and get rid of this indebtedness by us by transfer of the lands granted by the United States Government to the Tennessee & Coosa Railroad Company under the act of June 3, 1856? I made the remark, "Undoubtedly we can, under the ruling of the Supreme Court of the United States in the case of Cartwright, reported in one of the Wallace's reports, the number of which I forgot." I remarked at the same time, "I am the younger counsel in this case; Judge Rice is your advisory counsel. If I were in your place, Judge Wyeth, I would defer to his opinion and not to mine." Judge Rice remarked, "I am familiar with the Cartwright Case, and you can make the transfer."

They there, so far as Judge Wyeth and Rayburn were concerned, agreed that the settlement of Carlisle's debt in part should be made by the transfer of this land, including lands in the first 120 sections.

Some time after this—I don't know how long—Carlisle approached me about executing a deed for the company; that Judge Wyeth had told him to ask me to write a deed to submit to the board of directors. Carlisle told me in that conversation that he had seen the board of directors and they had agreed to it. I told Carlisle I would not write the deed unless I had the written resolution before me. Carlisle brought that resolution to me, in the handwriting of Louis Wyeth, signed by him as president of the Tennessee & Coosa Railroad Company. It was attested in the handwriting of Samuel K. Rayburn, the secretary and treasurer.

Thereupon I wrote the deed to carry out that resolution, on Sunday, too. I gave that deed and resolution to Carlisle next morning, and he told me he was going to Guntersville. He came back. The deed was executed, so he stated. I never saw that deed any more until the bill was filed by the Nashville, Chattanooga & St. Louis Railway Company against the Tennessee & Coosa Railroad Company for the purpose of setting that deed aside.

390 (Counsel for the Government objects to what the witness stated as to what Wyeth and Rayburn said with reference to the indebtedness of Carlisle because the same is hearsay and incompetent; also to what the witness said Carlisle stated about what the board of directors had agreed because it is hearsay; and also to that part of witness' statement saying that Carlisle said he was going to Guntersville, and that afterwards the deed had been executed, because the same is incompetent and irrelevant.)

Q. Do you know whether after the war the Tennessee & Coosa Railroad Company had any means to finish its road and complete the work?

A. Not a dollar on the face of the earth outside of this land and the railroad it built, for which it owed Carlisle. I know all about the railroad from 1871 to 1891, twenty years.

Q. Was work done on that railroad—put in running condition? If so, by whom?

A. A large amount of work had been done, and all except perhaps some grading on the top of the mountain, maybe three or four miles, had been completed ready for cross-ties before the war. The road was completed and fixed up in running condition from Attalla to Littleton, at the foot of Sand Mountain. The road had been completed prior to that time from Gadsden to Attalla and was being operated.

Q. Do you know whose money paid for what work was done after the war?

A. Carlisle's. He furnished all the iron from Attalla to the foot of the mountain. I saw the draft from a firm here in New Orleans. The fees that were due by the Tennessee & Coosa Railroad Company to Denson and Rice were paid by Carlisle out of his own individual money.

Q. How soon after recovery of ejectment was operation resumed on the road?

A. We tried that case in August, 1884; we got a judgment; it went to the Supreme Court and was affirmed, and shortly after the time of the litigation the Tennessee & Coosa Railroad Company went into possession of that property.

391 Q. Was the railroad in operation from Attalla to Littleton on the 29th of September, 1890?

A. I know it as a fact, it was, and to swear. I saw the trains pass from Gadsden by way of Gadsden to Littleton and return, and from that day to this.

Q. Do you know the lands of the first 120 sections?

A. I know them generally.

Q. What experience did you have in dealing in these lands?

A. I have been a land dealer all my life.

Q. Do you think you know of these to state their value?

A. I can state from a general idea.

Q. What, in your judgment, is a fair valuation of that land?

A. I would not have given him \$1.50 an acre for it at that time.

Q. Do you know Rayburn's handwriting? Can you state whether this is his handwriting?

(Witness is here handed a paper and examines the same.)

A. Yes, sir; it is Samuel K. Rayburn's; I have known his handwriting for fifteen years. He was register of the chancery court where I practiced for fifteen years.

Q. How long has Rayburn been dead?

A. I can not tell you, somewhere along in 1892 or 1893.

(Counsel asked that the paper above referred to be attached to the witness' deposition and marked Exhibit A, for identification.)

Cross-examination by Mr. WHITE:

Q. You speak of the indebtedness of the Tennessee & Coosa Railroad Company to Carlisle being in the neighborhood of \$100,000. Do you know this of your own knowledge?

A. I do not; I heard Carlisle, Rayburn and Wyeth say so.

(Counsel for the Government moves to exclude that part of the statement of the witness as to the indebtedness of the company to Carlisle, because it is hearsay.)

392 Q. What did Carlisle do towards putting the road in operation from Attalla to Littleton? The road had been graded, substantially from Attalla to Littleton, from sometime in the year 1856 or 1857?

A. It had grown up in pines and undergrowth; was washed away in many places, and the wear and tear that would take place upon the dirt embankments. In many places the young pine trees on the roadbed were very large. Carlisle had this roadbed cleaned off from a point where the railroad intersects the Alabama Great Southern Railroad, at the town of Attalla, to the foot of Sand Mountain, a distance of seven miles. He had these trees cut down, the grading repaired, bridges built, long causeways across Lime Creek. He had a depot built at Littleton, and put in order all the cross-ties, as well as the necessary equipment—all after he took possession of the road after recovery of this litigation.

Q. Was it not a very cheaply constructed road, that part Mr. Carlisle did—a temporary affair?

A. I do not know if the causeway across Lime Creek was. As to the balance, it was as good, except the ballasting, as it is now. The iron was secondhand iron and was light.

Q. How much did he pay for the iron?

A. I could not tell you; it was something between ten and twenty thousand dollars. I may be mistaken about that.

Q. When was it that you saw this resolution of which you speak, and from which you drew the deed?

A. I can not tell you the exact date; it was some time in 1887. Whatever the date of the deed, it was during that year.

Q. You say that resolution was signed by Judge Wyeth, and attested by Rayburn as secretary and treasurer of the Tennessee & Coosa Railroad Company?

A. Yes, sir.

The witness further testifies: Exhibit B, this paper handed me by Mr. Goodhue, is in the handwriting of Samuel K. Rayburn. I know his handwriting, because I know it as well as my own. I know he was secretary and treasurer of the Tennessee & Coosa Railroad Company. I identify the name of Louis Wyeth. It is his handwriting. The words "President of the Tennessee & Coosa Railroad Company" is in the handwriting of Samuel K. Rayburn. That paper was executed by the Tennessee & Coosa Railroad Company directors, upon the advice of Samuel F. Rice and Wm. H. Denson, the lawyers of said company.

Carlisle several years ago gave me that paper. I have kept it in my safe from that time to the present, and only discovered it a short time previous to this. Since my return from Washington, in looking over the papers in my safe I discovered it, and called Mr. Goodhue's attention to it. Shortly thereafter Mr. Carlisle came to my office and asked me to give him the paper, which I did. Under that contract or authority, after its execution, Carlisle conducted this litigation to recover possession of that railroad, although he had done so before.

(Endorsed:) Filed October 1, 1895. N. W. Trimble, clerk.

OFFICE OF THE TENNESSEE & COOSA RAILROAD COMPANY,
Guntersville, September 14, 1883.

The board of directors of the Tennessee & Coosa Railroad Company met pursuant to the call of the president of said company.

Present: Louis Wyeth, president, and M. Gilbreath, Henry L. Miller, Hugh Carlisle, Wendolen Seabold, S. K. Rayburn, directors.

The president, after calling the meeting to order, stated fully the object of the meeting.

It was, therefore, on motion of M. Gilbreath and seconded by H. L. Miller:

Resolved, That action of Hugh Carlisle in taking actual possession of the roadbed, right of way, franchise and property of the Tennessee & Coosa Railroad from Attalla to Gunter's Landing, on the Tennessee River, be fully authorized, ratified, confirmed, and approved by this board of directors. (Adopted.)

And be it further resolved, that we do ratify the further action of the said Hugh Carlisle in hiring hands and putting them to work in cutting the timber and clearing out the roadbed or track on said road, and using any other effort he may deem necessary in order to take, retain and hold the possession of said Tennessee & Coosa Railroad track or bed, and right of way, together with its franchise, subject at all times to the order of the board of directors of said Tennessee & Coosa Railroad Company. (Adopted.)

On motion of S. K. Rayburn, seconded by M. Gilbreath, it is resolved that we do nominate, constitute, and appoint Hugh Carlisle as the financial and constructing agent for the Tennessee & Coosa Railroad Company, thereby clothing him with full power and authority to construct, build and equip said railroad, and to put it into running order from Attalla to Gunter's Landing, on the Tennessee River, and for the purpose of investing him with full power and authority, the full intent and purpose of this resolution; we do authorize and empower him, the said Hugh Carlisle, to use any and all of the assets of said Tennessee & Coosa Railroad Company to carry out the full intent and meaning of this resolution, we ratifying the same as fully as it is in our power to do. (Adopted.)

It is further resolved by said board of directors of the said Tennessee & Coosa Railroad Company, and we agree to and with the said Hugh Carlisle, to pay him out of the assets of the said road the original cost and expenses he may incur in the construction, equipping and putting said road in running order, together with twenty per cent in addition for superintending and advances made by him on cost of construction, equipping and putting said road in running order. (Adopted.)

It is further resolved, that the said Hugh Carlisle hold and retain a lien on said railroad and its franchise, both real and personal, until said cost and expenses incurred by him, the said Hugh Carlisle, are fully paid off and discharged, together with the twenty per cent, by said board of directors agreed to be paid over and above the cost and expenses of construction and equipping the said road. (Adopted.)

And on motion of W. Seabold, seconded by H. L. Miller, it is resolved that the indebtedness of the Tennessee & Coosa Railroad Company 395 to Hugh Carlisle, for work done on the said road during the years 1860 and 1861, are just and equitable, and are by this resolution revived and renewed as against said company; and it is further resolved, that all other claims and demands that have heretofore been allowed to said Carlisle by the resolution of the board of directors of said Tennessee and Coosa Railroad Company be, and the same are, hereby revived and renewed against said railroad company from this date, to-wit, September 14, 1883, together with interest that has accrued thereon up to date. (Adopted.)

(Signed)

LOUIS WYETH,
President of the T. & C. R. R. Co.

S. K. RAYBURN,
Secretary of the T. & C. R. R. Co.

STATE OF ALABAMA, *Marshall County:*

I, Samuel K. Rayburn, secretary of the Tennessee & Coosa Railroad Company, hereby certify that the foregoing resolutions were adopted by the board of directors of the Tennessee & Coosa Railroad Company and spread upon the minutes of said board.

Given under my hand and the corporate seal of said Tennessee & Coosa Railroad Company this 15th day of September, 1883.

[SEAL.]

(Signed)

S. K. RAYBURN,
Secretary of the T. & C. R. R. Co.

OFFICE OF THE TENNESSEE & COOSA RAILROAD COMPANY,
Guntersville, Ala., Jan. 8, 1872.

Be it remembered that on this day a called meeting of directors of said company was held at the office of said company, at which the following proceedings were had, to wit:

Present: Louis Wyeth, president; Samuel K. Rayburn, Samuel Henry, Granderson Greenwood and Henry Miller, directors; a quorum being present.

The secretary being absent, Samuel K. Rayburn was elected secretary pro tem.

On motion of Samuel Henry it was resolved that the action of the president of this company in sending to the East Alabama & Cincinnati Railroad Company the certified statement of the indebtedness of this company heretofore sent meets with the approbation of this board, as the said statement contains a correct statement of the then ascertained and estimated indebtedness of this company.

Resolved, That the president of this company be requested to send a new statement to said East Alabama & Cincinnati Railroad Company of the indebtedness of this company in strict conformity with the one heretofore sent, and with the addition of the several claims acknowledged and allowed since the date of former statement, to wit, the claim of Samuel K. Rayburn for one hundred dollars, the claim of Thomas G. A. Cox for the sum of six hundred and thirty dollars cents, and the claim of Granderson Greenwood for the sum of one hundred and dollars and 12 cents, that said statement, under the certificate of the president and corporate seal of the company be forwarded to the president and directors of the East Alabama & Cincinnati Railroad Company.

Statement of the indebtedness of the Tennessee & Coosa Railroad Company, so far as ascertained, with the interest thereon, calculated to October 1, 1872.

| | |
|---|-------------|
| Amount due H. Carlisle December 20, 1869..... | \$11,467.16 |
| Interest thereon up to October 1, 1871..... | 1,636.87 |
| Amount due H. Carlisle January 3, 1871..... | 3,000.00 |
| Interest thereon up to October 1, 1871..... | 180.00 |
| Amount due H. Carlisle July 3, 1871..... | 2,300.00 |
| Interest thereon up to October 1, 1871..... | 46.00 |
| Amount due S. K. Rayburn January 1, 1870, transferred to H. Carlisle... | 1,700.00 |
| Interest thereon up to October 1, 1871..... | 154.77 |
| Amount due Louis Wyeth December 20, 1869..... | 100.00 |
| Interest up to October 1, 1871..... | 14.22 |
| Amount due Louis Wyeth January 8, 1871..... | 2,000.00 |
| Interest up to October 1, 1871..... | 120.00 |
| Amount due Judge R. W. Walker, for legal services as counsel, July 3, 1871..... | 100.00 |
| Interest up to October 1, 1871..... | 1.33 |
| Amount due R. C. Brickell, for legal services, July 3, 1871..... | 100.00 |
| Interest up to October 1, 1871..... | 1.33 |
| Amount due Gilbreath & Lusk July 3, 1871..... | 80.00 |
| Amount due Gideon Ellis for legal services July 3, 1871..... | 75.00 |
| Amount due R. K. Boyd, secretary of the company, July 3, 1871..... | 200.00 |
| Amount due D. G. Lewis April 11, 1870..... | 1,110.82 |
| Interest up to October 1, 1871..... | 130.80 |
| Amount due for costs in circuit court, estimated at..... | 200.00 |
| Amount due S. K. Rayburn October 1, 1871..... | 100.00 |
| Amount due Thos. G. A. Cox..... | 631.46 |
| Amount due D. G. Greenwood..... | 132.12 |

(Endorsed:) Filed October 1, 1895. N. W. Trimble, clerk.

Consent decree.

In the circuit court of the United States for the southern division of the northern district of Alabama.

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| THE UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD COM- pany et als. | | |

Come the parties by their solicitors, and by consent this cause is submitted for decree as to the defendants, The Nashville, Chattanooga & St. Louis Railway, and the Manhattan Trust Company.

It is, by consent of all parties, ordered, adjudged and decreed that the right of way of the said Nashville, Chattanooga & St. Louis Railway, as now located in and over the lands in controversy, embracing fifty feet on each side from the center of the track of the railroad now constructed in and through said lands, together with the switches and turnouts therewith connected, and the land on which the section houses and
398 depots of said company are erected, be and the same are hereby confirmed to the said company, freed from the decree which may be rendered in this cause by and between the other parties to this suit.

And, by consent of parties, it is ordered, adjudged, and decreed that, without prejudice to the rights of other parties, the said Manhattan Trust Company, and the said Nashville, Chattanooga & St. Louis Railway, be dismissed as defendants, without liability for costs.

(Signed)

JOHN BRUCE, *Judge.*

We consent for the above decree to be made and entered this October 4, 1895.

(Signed)

FRANK S. WHITE,
Solicitor for Settlers.

(Signed)

EMMET O'NEAL,
United States Attorney.

(Endorsed :) Filed in open court this October 4, 1895. N. W. Trimble, clerk.

Amendment to answer of Tennessee & Coosa Railroad Company.

In the circuit court of the United States for the southern division of the northern district of Alabama.

| | | |
|---|---|--------------------|
| UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD COM- pany, Hugh Carlisle, et als. | | |

Strike out fifth paragraph of answer and insert the following in lieu thereof:

Fifth. In answer to eighth and ninth paragraphs of said bill, respondent says: It can not say whether any of the parties therein named are or are not now in possession of the lands therein described or any part thereof.

399 But respondent says, that of each parcel of said land this respondent made sale long prior to September 29, 1890; on such sales receiving part or the whole of the purchase money, and letting the purchasers into possession, and the purchasers, or those claiming under them, have since remained in the undisturbed possession thereof. Such sales were made by respondent in good faith to raise money to aid in the construction of its said railroad. So far as the purchase money was paid, it was so applied, and for the purchase money not paid the notes or obligations of the purchasers were taken. Such notes or obligations have since been transferred to the co-respondent, Hugh Carlisle; for the purpose and on the consideration in his answer expressed, and this respondent affirms the validity of such sales and the title of such purchasers.

Exhibit A to the amended answer of co-respondent, Hugh Carlisle, is believed to be a full and complete list of such sales, showing the lands sold, the amount of the purchase money, who were the purchasers, who have paid and who have not paid the purchase money.

(Endorsed:) Filed in open court by leave of the court this October 4, 1895. N. W. Trimble, clerk.

Minute entry of October 4, 1895.

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| UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD CO., AND | | |
| Hugh Carlisle, et als. | | |

Ordered by the court that this cause be and the same is hereby set down for a hearing on Monday, October 7, 1895.

400 *Minute entry of October 9, 1895.*

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| UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY | | |
| et als. | | |

This cause coming on to be heard on oral argument of counsel, was argued until the hour of adjournment, and was then submitted on briefs of counsel, evidence taken in the cause, exhibits thereto, pleadings and papers on file in the cause.

Note of submission.

In the circuit court of the United States for the southern division of the northern district of Alabama.

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| UNITED STATES | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE & COOSA RAILROAD CO., HUGH | | |
| Carlisle, et als. | | |

Respondent Hugh Carlisle submits for final decree on his demurrers and answer to original bill, filed February 1, 1892.

On his amended answer, filed March 29, 1893, and on additional grounds of demurrer, filed September 26, 1895; also on depositions of Henry L. Miller, Mark Johnson, Hugh Carlisle, W. H. Denson, and upon each and all the exhibits to said depositions, also upon map of definite location of the Tennessee & Coosa Railroad, certified lists of land, certified copy of mortgage or deed of trust from Tennessee & Coosa Railroad Company to A. G. Henry, M. Gilbreath and Louis Wyeth.

Respondent Tennessee & Coosa Railroad Company submits on its answer to the original bill filed, and also upon the amended answer filed, and also upon the same testimony on which its co-respondent, Hugh Carlisle, makes his submission.

(Endorsed:) Filed October 9, 1895. N. W. Trimble, clerk.

401

Opinion.

In the circuit court of the United States, southern division of the northern district of Alabama.

THE UNITED STATES

vs.

THE TENNESSEE AND COOSA RAILROAD COMPANY, The Nashville and Chattanooga Railroad Company, Hugh Carlisle, et als.

No. 40. In equity.

BRUCE, Judge:

The bill in this case was filed October 31, 1891, and seeks a decree of forfeiture of the lands described in the bill.

It brings up for consideration the act of Congress granting lands to the State of Alabama to aid in the construction of a railroad from the Tennessee River, at or near Guntersville Landing, to Gadsden, on the Coosa River, which act was passed and approved June 3, 1856.

The State of Alabama accepted the trust created by the act, and granted the lands to the Tennessee and Coosa River Railroad Company, by act of the legislature of the session laws, 1859-60.

The route of the road was definitely fixed and a map of the lands was filed in the Land Office at Washington, and certified lists of the lands were approved by the Secretary of the Interior and delivered to the State.

The Tennessee and Coosa Railroad Company sold portions of the lands to various purchasers, some of whom are made parties to the bill, but the larger part of the lands were sold to Hugh Carlisle, and he succeeded to the right of the company for the unpaid purchase money due and unpaid upon the portions of the lands previously sold.

The Tennessee and Coosa River Railroad Company contracted with Hugh Carlisle for the construction of the road, and deeds of lands were made by the railroad company to Hugh Carlisle in the year of 1887,

402 for the consideration stated in the deeds, the same being as claimed for labor done and expenditures for the building and construction of the railroad.

The bill charges fraud on Carlisle; that he did not pay for the lands; that he is not a bona fide purchaser, and charges waste and spoliation of the lands, and that Carlisle is insolvent.

The prayer of the bill is that the selection made for the railroad company, as well as the approvals thereof, be set aside; that any and all cer-

tificates or other evidence of title issued to said Tennessee & Coosa Railroad Company, or purporting to convey the said lands or any part thereof, shall be delivered by such of the defendants as may be found to have them in possession, to the clerk of this court, to be by him duly canceled, and that all the rights, title, and interest of every kind and description of the said defendants in and to any of the lands and property described in this bill shall be divested out of them and declared to be vested in the United States of America. And that the conveyances hereinabove set forth as Exhibits D and E shall be set aside, vacated, and annulled, and the said Hugh Carlisle shall be directed by the decree of this honorable court to deliver the originals thereof within a time to be fixed by the said decree to the clerk of this court, and that the same shall be duly canceled on the records of the several counties wherein the same have been recorded, with prayer for general relief.

The answer of the defendant, The Tennessee & Coosa Railroad Company, contains a full and specific denial of the charges of fraud in the bill, and among other things says: "That said conveyances were made and the lands were sold for the purpose of aiding in the construction of said railroad, and that the entire consideration recited to have been paid for said lands was used in the construction of said railroad."

Hugh Carlisle's answer to the bill is quite full and specific, and it is deemed unnecessary to refer more at length to his answer, or the other answers of the respondents, which are filed in the cause.

The main question arises under the provisions of the granting act of Congress of June 3, 1856, and also what is known as the forfeiture act of the 29th day of September, 1890. It is not questioned that on and
403 before that date, September 29, 1890, 10.22 miles of the railroad, from Attalla northwardly to Littleton, had been constructed and was at that time in operation.

The first section of the forfeiture act provides:

"That there is hereby forfeited to the United States, and the United States hereby resumes title thereto, all lands heretofore granted to any State or any corporation, to aid of a railroad opposite to and coterminous with the portion of any such railroad not now completed and in operation, for the construction or benefit of which such lands were granted; and all such lands are declared to be a part of the public domain. * * *

A forfeiture act must be construed with some strictness, and by the very terms of this act, the railroad having been completed and in operation opposite to and coterminous with the lands in question, other than those in the first 120 sections, are not within the terms of the act.

It would almost seem as if they were purposely excluded from the terms of the act, and the argument is not really insisted on upon this point, but upon the construction of the fourth section of the act granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of certain railroads in said State, June 6, 1856.

That section is in these words: "That a quantity of land, not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold, and when the governor of said State shall certify to the Secretary of the Interior that any continuous miles of any of said railroad is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads, having twenty continuous miles

completed as aforesaid, and included within a continuous length of twenty miles of each of such roads, may be sold, and so from time to time, until said roads are completed, and if any of said road is not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States."

This section of the granting act and other acts of Congress, using the same words, have been frequently before the courts, and the
404 Supreme Court has held in many cases that these words are grants in presenti, and that the concluding clause of the section is a condition subsequent, which, if not enforced, the power to sell continues as before its breach, "limited only by the object of the grant and in the manner prescribed in the act." *Schulenberg vs. Harriman*, 21st Wall., 44; *Railroad Company vs. Cartwright*, same, vol. 310.

It is contended, however, that because the lands were sold and transferred after the first ten years had expired, from the date of the grant, June 3, 1856, and because the conveyance of the lands to Hugh Carlisle was made long after the ten years period had expired, and the construction of the railroad was not completed, then the sales of the lands made after that time were not void under the terms of the law.

This view of the law is not borne out by the cases cited, but the contrary.

In *Schulenberg vs. Harriman*, cited supra, it is said at page of opinion 62: "The provision in the act of Congress of 1856, that all lands remaining unsold after ten years, shall revert to the United States if the road be not completed, is no more than a provision that the grant shall be void if a condition subsequent be not performed; citing authorities." * * * The opinion goes on, page 63: "If the condition be not enforced, the power to sell continues as before its breach, limited only by the object of the grant, and the manner of the sale prescribed in the act. And it is settled law that no one can take advantage of the nonperformance of the condition subsequent annexed to an estate in fee but the grantor or his heirs, or the successors of the grantor, if the grant proceed from an artificial person, and if they do not see fit to assert their right to enforce a forfeiture upon that ground, the title remains unimpaired in the grantee, * * * and the same doctrine obtains when the grants upon condition proceed from the Government, no individual can assail the title it has conveyed, on the ground that grantee has failed to perform the condition annexed."

If the Government of the United States, through its legislative body, takes no action to enforce the condition in the granting act, to these lands, then by what right or authority can this suit be maintained?

405 If it be correct that the lands in question are not within the terms of the forfeiture act, then how is it shown that it ever was the purpose of Congress to insist on any forfeiture contained in any provision of the act? On the contrary, does it not show that no such purpose was ever entertained, because never put into execution by any legislative act?

It may be, and indeed the language used in the forfeiture act, cited supra, indicates that the lands in question may have been purposely excluded from the terms of that act; and who shall say that the Congress did not find ample reason why the construction of the railroad had been so long delayed, and why the forfeiture should not apply to it.

Congress may have been influenced by the condition of the country for a portion of the time between the passage of the granting act and the final completion of the road.

The intervention of the recent war may have had an influence upon this legislation; but whatever it may have been, the motive which influenced Congress is not open to question here. It is sufficient to say that, in the absence of Congressional action as to the grant of these lands, there are no proper grounds upon which this bill can be maintained. It is clear implication from the action of Congress in the forfeiture act of September 29, 1890, that the Congress did not intend to insist on any condition subsequent, which existed in the granting act.

It is to be noted in this connection that, at the date of the passage of the forfeiture act, the said railroad, as contemplated in the granting act, from Guntersville, on the Tennessee River, to Gadsden, on the Coosa, was in process of construction, nearing completion, and was, in fact, completed and in actual operation before this bill was filed.

As to the charges of fraud in the bill, they are not sustained by the proof—at least by such measure of proof as is required in a case like this. And it is questionable how far the account and settlements between Carlisle and the railroad company are open for consideration here. The company obtained its title from the State of Alabama, acting under a statute of the State accepting the grant of land and the trust created by the act, and in the case of the United States 406 vs. Des Moines Company it is held that the knowledge and good faith of a legislature are not open to question, but the presumption is conclusive that it acted with full knowledge and in good faith, and, in the absence of legislation by Congress, this bill cannot be maintained.

The result of these views is that the lands embraced in the first one hundred and twenty sections of the granting act, the railroad company was authorized to sell in advance of the construction of the road, and that the parties to whom such sales were made, to good title, and there can be no recovery or restitution of any of these lands to the public domain in this case.

2. That the lands described in Exhibit D to original bill are lands which lie opposite to that part of the road which was completed and in operation on the 29th day of September, 1890, and are not within the lands covered by act of September 29, 1890.

(Endorsed:) Filed December 18, 1895. N. W. Trimble, clerk.

Final decree.

In the United States circuit court for the southern division of the northern district of Alabama.

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| THE UNITED STATES | } | No. 40. In equity. |
| vs. | | |
| TENNESSEE & COOSA RAILROAD CO., HUGH Carlisle, et als. | | |

The above-stated cause coming on to be heard is submitted for final decree. Upon due consideration of the pleadings and proof, the court finds the following facts:

First: The court finds that prior to the 29th day of September, 1890,

the Tennessee & Coosa Railroad Company had sold to bona fide purchasers all the lands embraced in the first 120 sections, which
407 by the terms of the granting act it was authorized to sell in advance of the construction of the road. That these sales were bona fide and made to aid in the construction of the road. That the allegations of the bill, that the sale to Carlisle was without consideration and colorable, are not sustained by the evidence, but the sale to Carlisle was bona fide and based on good consideration, and the proceeds of the sale used in the construction and equipment of the road.

Second. The court finds that the Tennessee & Coosa Railroad from Gadsden to Littleton, a distance of ten and 22-100 miles, was completed and in operation on and before the 29th day of September, 1890, and that the lands described in Exhibit D to original bill, to wit:

The lands embraced in and conveyed by the deed from the Tennessee & Coosa Railroad Company to Hugh Carlisle, bearing date the 4th day of April, 1887, are lands which lie opposite to that part of the road which was completed and in operation on the 29th day of September, 1890, and therefore not within the lands forfeited by the act of September 29, 1890.

The court is therefore of the opinion that there has been no forfeiture of the lands as to which a judicial declaration of forfeiture is sought by the bill, and it is accordingly ordered and decreed that the relief sought by the bill be denied and the bill dismissed.

It is further ordered adjudged and decreed that Owen T. Holmes, the receiver, proceed to collect the rent notes taken by him for the year 1895, and any unpaid rents for previous years, and pay to the clerk of the court all the costs that have accrued in this cause up to the date; and that on or before January the 15th, 1896, said receiver file his accounts and vouchers for settlement; and it is hereby referred to N. W. Trimble, special master, to pass upon and report to the court upon said account, in which he will charge the receiver with whatever sums have come into his hands as such receiver, and credit him with such amounts as he has necessarily expended in the protection of the property, collecting rents, etc. And said special master shall also report what compensation would

be a reasonable allowance for the said receiver and his counsel, to
408 be paid out of the funds in the receiver's hands, or which may have been deposited with the clerk of the court. That on or before the 1st day of January, 1896, said receiver shall put Hugh Carlisle in possession of the lands specifically described and set forth in the deed from the Tennessee & Coosa Railroad Company to Hugh Carlisle, Exhibit E to original bill, and shall surrender possession of the remainder of the lands in his possession to such persons as may exhibit to him certificates of purchase from the Tennessee & Coosa Railroad Company, together with evidence of fact that they are either purchasers from the Tennessee & Coosa Railroad Company, or the transferees of such purchasers. Such purchasers are put in possession by this decree subject to whatever purchase money may be due and unpaid to the Tennessee & Coosa Railroad Company, and subject to whatever right the Tennessee & Coosa Railroad Company and Hugh Carlisle may have to enforce the payment of said purchase money. Should any dispute arise as to the particular person entitled to possession of any particular tract of land

under this decree, the receiver will refer the matter at once to this court for further instructions.

The receiver will surrender to the makers all rent notes for 1896.

(Signed)

JOHN BRUCE, *Judge*.

DECEMBER 18, 1895.

(Endorsed:) Filed December 18, 1895. N. W. Trimble, clerk.

409

Petition for appeal.

The United States circuit court of appeals for the fifth circuit, term of _____, in the year of our Lord one thousand eight hundred and ninety-six.

APPEAL.

IN RE UNITED STATES OF AMERICA

vs.

THE TENNESSEE AND COOSA RAILROAD COMPANY, Hugh Carlisle, Jasper M. Dixon, John Eason, John Pepper, J. J. Smith, Joe Slaton, Thomas Cassells, Solomon P. Ledbetter, John Mizzell, W. W. Elkins, Jack Keigle, G. T. Amos, Doc Gilbreath, A. M. Gilbreath, J. T. Hambrick, Joseph J. Pugh, W. A. J. Matthews, B. C. Bartlett, B. J. Lowe, John Smith, James S. Johnson, William Curry, John K. Roe, David Scott, Bethel L. Leith, J. W. Whitt, E. A. Toney, Lindsey Holland, Stephen L. Rodgers, William Avery, William Rhodes, T. B. Thrasher, Lewis Whitt, J. W. Jones, W. H. McCord, W. R. Frazier, W. A. Darnell, John J. Patterson, Asa Young, E. J. Barksdale, Willis W. Curry, A. J. Fletcher, Madison Cerns, John H. Fletcher, J. P. Scott, T. J. Bates, W. H. Baker, Solomon Beginfield, George W. Bruce, John Collier, Tom Simpson, B. T. Burns, Anderson Whitt, R. W. Clay, W. F. McCord, Mrs. S. S. Fletcher, W. W. Harper, James B. Stevenson, C. T. Norton, Walter Davis, Benjamin Scott, B. O. Scott; the Nashville, Chattanooga & St. Louis Railway Company, a corporation under the laws of the State of Tennessee; the Manhattan Trust Company, a corporation under the laws of the State of New York.

No. 40. In equity.

The United States of America, by their attorney, Emmet O'Neal, and by order of the Department of Justice of the said United States of America, feeling aggrieved by the decree and judgment entered on the 18th day of December, 1895, in the above-entitled cause or proceeding,

and that there is manifest error therein, do hereby appeal from
410 said decree to the circuit court of appeals for the fifth circuit, and
pray that their appeal may be allowed, and that a transcript of
the record and proceedings and papers upon which said decree is made,
duly authenticated, may be sent to the circuit court of appeals for the
fifth judicial circuit for the United States, and herewith present and file
with the clerk their assignment of error.

(Signed)

EMMETT O'NEAL,
Attorney for the United States.

This the 14th day of March, 1896.

Assignment of error.

The United States circuit court of appeals for the fifth circuit, term
of , in the year of our Lord one thousand eight hundred and
ninety-six.

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| IN RE UNITED STATES OF AMERICA | } | No. 40. In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY, Hugh Carlisle, et als. | | |

Afterwards, to wit, on the 14th day of March, 1896, in his same term,
before the honorable judges of the circuit court of appeals for the fifth
circuit, in the city of New Orleans, come the United States of America,
by their attorney, Emmet O'Neal, and say that in the record and proceed-
ings aforesaid there is manifest error in this, to wit:

1. The court erred in its findings on the facts, that prior to the 29th
day of September, 1890, the Tennessee & Coosa Railroad Company had
sold to bona fide purchasers all the lands embraced in the first 120 sec-
tions, which, by the terms of the granting act, it was authorized to sell
in advance of the construction of the road; that these sales were bona
fide and made in aid of the construction of the road.

411 2. The court erred in finding that the allegations of the bill that
the sale to Carlisle was without consideration and colorable, were
not sustained by the evidence, but that the sale to Carlisle was
bona fide and based upon good consideration, and the proceeds of the
sale used in the construction and equipment of the road.

3. The court erred in its findings on the facts, that the Tennessee &
Coosa Railroad Company, from Gadsden to Littleton, a distance of 10.22
miles, was completed and in operation on and before the 29th day of
September, 1890, and that the lands described in Exhibit D to the orig-
inal bill of complaint, to wit, the lands embraced in and conveyed by the
deed of the Tennessee & Coosa Railroad Company to Hugh Carlisle,
bearing the date of April 4, 1887; or lands which lie opposite to that
part of the road which was completed and in operation on the 29th day
of September, 1890, and, therefore, not within the lands forfeited by the
act of September 29, 1890.

4. The court erred in rendering the final decree in said cause, denying
the relief sought by the bill of complaint, and dismissing said bill of
complaint.

5. The court erred in not rendering a decree in favor of the United States, granting the relief prayed for in the original bill of complaint.

6. The court erred in the decree rendered by it in this case.

7. The court erred in decreeing that Owen T. Holmes, the receiver, proceed to collect the rent notes taken by him for the year 1895, and any unpaid rents for previous years, and pay to the clerk of said court all the costs that have accrued in said cause up to the date of said decree.

8. The court erred in decreeing that said receiver, on or before the 15th day of January, 1896, file his accounts and vouchers for settlement.

9. The court erred in referring said accounts and settlement to N. W. Trimble, special master, to pass upon and report to the court said amounts, in which said master was directed to charge said receiver
412 with whatever sums have come into his hand as such receiver, and credit him with such amounts as he had necessarily expended in the protection of the property, collecting rents, etc.

10. The court erred by directing said special master to report what compensation would be a reasonable allowance to said receiver and his counsel, to be paid out of the funds in the receiver's hands or which had been deposited with the clerk of the court.

11. The court erred in decreeing that said receiver, on or before the 1st of January, 1896, should put Hugh Carlisle in possession of the lands specifically described and set forth in the deed from the Tennessee & Coosa Railroad Company to Hugh Carlisle, marked Exhibit E, to the original bill of complaint.

12. The court erred in directing said receiver to surrender possession of the remainder of the lands mentioned in said bill and in his possession, to such persons as might exhibit to him certificates of purchase from the Tennessee & Coosa Railroad Company, together with evidence of the fact that they were either purchasers from the Tennessee & Coosa Railroad Company or the transferees of such purchasers.

13. The court erred in its decree in directing that said purchasers be put in possession of the land covered by the decree subject to whatever purchase money might be due and unpaid to the Tennessee & Coosa Railroad Company, and subject to whatever right the Tennessee & Coosa Railroad Company and Hugh Carlisle had to enforce the payment of the purchase money for said lands.

14. The court erred in directing the receiver to surrender to the makers all the rent notes for 1896.

And for other errors apparent on the record.

And the United States of America pray that the decree aforesaid shall be reversed, annulled, and held for naught, and that a decree be
413 rendered in favor of the plaintiff in accordance with the prayer of the plaintiff's original bill of complaint, and for such other relief as may be proper in the premises.

(Signed)

EMMET O'NEAL,
Attorney for the United States.

Order granting petition for appeal.

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| THE UNITED STATES OF AMERICA. | } No. 40. In equity. |
| <i>vs.</i> | |
| THE TENNESSEE AND COOSA RAILROAD COMPANY, Hugh Carlisle et al. | |

In the matter of the petition of the United States of America in the above stated cause, for an appeal from the decree rendered by said court in said cause, on December, 1895.

The said United States of America by its attorney, Emmet O'Neal, and by order of the Department of Justice, having this day filed their petition praying that they may be allowed an appeal from the decree of this court, rendered in said cause on the 18th day of December, 1895; and it appearing to the satisfaction of the court that the prayer of said petition should be granted; and it further appearing to the court that said petitioner has filed in this court assignments of error for appeal, as required by law;

It is therefore ordered, adjudged, and decreed by the court that said petition be granted and the said appeal be allowed, as prayed in and by said petition, to the circuit court of appeals in and for this the fifth judicial circuit of the United States, to be holden in the city of New Orleans, State of Louisiana, in said Judicial Circuit.

This the 14th day of March, 1896.

(Signed)

JOHN BRUCE, *Judge.*

(Endorsed:) Filed March 18, 1896. N. W. Trimble, clerk.

414 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the Tennessee and Coosa Railroad Company, Hugh Carlisle, Jasper M. Dixon, John Eason, John Pepper, J. J. Smith, Joe Slaton, Thomas Cassels, Solomon P. Leadbetter, John Mizzell, W. W. Elkins, Jack Keigle, G. T. Amos, Doc Gilbreath, A. M. Gilbreath, J. T. Hambrick, Joseph J. Pugh, W. A. J. Matthews, B. C. Bartlett, W. J. Lowe, John Smith, James S. Johnson, William Curry, John K. Roe, David Scott, Bethel L. Leith, J. W. Whitt, E. A. Toney, Lindsey Holland, Stephen L. Rodgers, William Avery, William Rhodes, T. B. Thrasher, Lewis Whitt, J. W. Jones, W. H. McCord, W. R. Frazier, W. A. Darnell, John J. Patterson, Asa Young, E. J. Barksdale, Willis W. Curry, A. J. Fletcher, Madison Cerns, John H. Fletcher, J. P. Scott, T. J. Bates, W. H. Baker, Solomon Beginfield, George W. Bruce, John Collier, Tom Simpson, B. T. Burns, Anderson Whitt, R. W. Clay, W. F. McCord, Mrs. S. S. Fletcher, W. W. Harper, James B. Stevenson, C. T. Norton, Walter Davis, Benjamin Scott, B. O. Scott; The Nashville, Chattanooga and St. Louis Railway Company, a corporation under the laws of the State of Tennessee; The Manhattan Trust Company, a corporation under the laws of the State of New York, greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the fifth judicial circuit, to be holden

at New Orleans, Louisiana, thirty days after the date thereof, pursuant to an order granting an appeal, filed in the clerk's office of the circuit court of the United States, for the southern division of the northern district of Alabama, wherein the United States of America is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of 415 the Supreme Court of the United States, this 28th day of March, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN BRUCE, *Judge.*

On this 22nd day of April, in the year of our Lord one thousand eight hundred and ninety-six, personally appeared George W. Clark, deputy marshal, before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Hugh Carlisle, W. H. McCord, and W. T. McCord.

G. W. CLARK,
Deputy United States Marshal.

Sworn to and subscribed the 24th day of April, A. D. 1896.

[SEAL.]

S. T. FOWLER,
United States Commissioner.

On this 10th day of April, in the year of our Lord one thousand eight hundred and ninety-six, personally appeared J. V. Musgrove, deputy United States marshal in and for the northern district of Alabama, before me, the subscriber, clerk United States circuit court, northern district of Alabama, and makes oath that he delivered three copies of the within citation to Oscar R. Hundley, attorney for the Tennessee & Coosa Railroad Company, the Nashville, Chattanooga & St. Louis Railway Company, a corporation under the laws of the State of Tennessee; and the Manhattan Trust Company, a corporation under the laws of the State of New York.

J. V. MUSGROVE,
Deputy Marshal.

Sworn to and subscribed before me this 10th day of April, A. D. 1896.

[SEAL.]

N. W. TRIMBLE,
Clerk U. S. Circuit Court, Nor. Dist. Ala.

416 In the circuit court of the United States for the southern division of the northern district of the State of Alabama.

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|---------------------------------------|---|
| UNITED STATES | } |
| <i>vs.</i> | |
| TENNESSEE AND COOSA RAILROAD COMPANY, | |
| Hugh Carlisle, et als. | |

We the undersigned defendants in the above entitled cause, hereby acknowledge the receipt of a copy of the citation issued in said cause, a

true copy of which is hereto attached, citing the undersigned to appear in the court of appeals of the United States for the fifth circuit thereof, to which said court said cause has been appealed. We hereby waive all formalities in the issuance and service of said citations, and hereby acknowledge due and legal service of the same, and due and legal notice in said cause that the same has been appealed to the circuit court of appeals of the United States for the fifth circuit.

Witness our signature this day of April, 1896.

T. B. Thrasher, W. W. Harper, Lewis Whitt, J. T. Hamrick, E. A. Toney, John Smith, Anderson Whitt, Wm. A. Darnell, Dock Gilbreath, E. A. Toney, J. F. Amos, S. J. S. Fletcher, J. J. Smith, W. W. Curry, W. H. Baker, James S. Johnston, Lindsey Holland, James B. Stephenson, Solomon E. Beginfield, Stephen L. Rogers, B. F. Burns, A. J. Cagle, T. E. Cassells, Wm. Rhodes, T. J. Bates, though not a defendant; George W. Bruce, J. F. Slaton, John Mizell, David Scott, John H. Fletcher, John Pepper, J. P. Scott, B. O. Scott, Bethel Leath, J. N. Dickson, J. R. Eason, W. R. Frazier, W. A. J. Matthews, Wm. Currey.

Witness to all the above signatures this the 18th day of April, 1896.

W. W. CURREY.

UNITED STATES

vs.

TENNESSEE AND COOSA RAILROAD COMPANY

et als.

The marshal makes the following returns to the citation hereto attached:

Solomon P. Ledbetter, dead; W. W. Elkins, gone to Texas; 417 A. M. Gilbreath, in Texas; Joseph J. Pugh, in Texas; B. C. Bartlett, in Georgia; W. J. Lowe, cannot find him; John K. Roe, dead; J. W. Whitt, not found; J. J. Patterson, in Texas; J. W. Jones, not found; E. J. Barksdale, not found; O. J. Fletcher, dead; Madison Cerns, dead; John Collier, gone to Texas; Tom Simpson, moved to parts unknown; R. W. Clay, gone to Georgia; C. T. Norton, moved to parts unknown; Walter Davis, in Texas; Benjamin Scott, dead.

J. C. MUSGROVE,

United States Marshal.

Order extending time for filing of transcript in the U. S. circuit court of appeal.

In the United States circuit court of appeals, fifth circuit.

UNITED STATES

vs.

TENNESSEE AND COOSA RAILROAD COMPANY,

Hugh Carlisle, et al.

No. 40. In equity.

HON. DON A. PARDEE,

Judge of the United States Circuit Court of Appeals for the Fifth Circuit;

Your petitioner, Emmet O'Neal, U. S. attorney for the northern district of Alabama, would respectfully represent and show unto your

honor, that on the 18th day of March, 1896, an appeal was taken in the above-entitled cause from a decree therein rendered by the United States district court for the southern division of the northern district of Alabama to the United States circuit court of appeals for the fifth circuit; that the record in said cause is exceedingly voluminous; that the United States district court for the southern division of the northern district of Alabama was in session at the time said appeal was taken, and that immediately upon the adjournment thereof the court for the northern division of the said district met, and was in continual session until its recent adjournment for the summer months; that the clerk of said courts acts for both southern and northern divisions, and has to devote
 418 most of his time to his duties as clerk connected with the sessions of the court; that notwithstanding vigorous efforts to complete said record in the above case, said clerk has been unable to do so within the time heretofore granted by your honor.

Your petitioner therefore prays that the time for making and filing the record in said cause, and for docketing said cause in said court of appeals, be extended to 20th October next.

Your petitioner herewith submits as a part of this petition a written statement of the clerk of said court, showing the necessity for the extension of time for making and filing the record in said cause.

(Signed)

EMMET O'NEAL,

Per F. S. W.,

U. S. District Attorney for the Northern District of Alabama.

Extension of return day of transcript to September 20, 1896, granted.

(Signed)

DON A. PARDEE,

Circuit Judge.

JULY 26, 1896.

Order for transporting certain original papers to circuit court of appeals for inspection, etc.

In the circuit court of the United States for the southern division of the northern district of Alabama.

UNITED STATES

vs.

TENNESSEE AND COOSA RAILROAD COMPANY,
 Hugh Carlisle, et als.

No. 40. In equity.

It appearing to the court that it is necessary and proper that certain books on file in the above-entitled cause, as exhibits to the testimony of Hugh Carlisle and Mark Johnson, should be inspected
 419 by the United States circuit court of appeals for the fifth circuit, upon the appeal taken in said cause;

It is, therefore, ordered, adjudged, and decreed by this court that, instead of inserting in the transcript of the record and proceedings in the above-entitled cause the exhibits hereinafter specified, that the clerk of this court do forward by express to the clerk of the circuit court of appeals for the fifth judicial circuit, at New Orleans, La., the following books, etc., to wit: Map of definite location, and the original exhibits to

the testimony of Hugh Carlisle, marked respectively Exhibits C, D, E, F, G, I, J, L, N, Q, and S; and also the original exhibits to the testimony of Mark Johnson, marked respectively Exhibits B and D; so that said exhibits may be inspected by the said circuit court of appeals, and after the conclusion and final determination of said cause in said last named court, that the same may be returned to the clerk of this court.

It is further ordered by the court that the expense for the transporting and return of said exhibits be taxed against the appellant as a part of the costs in said cause.

(Signed)

JOHN BRUCE, *Judge*.

(Endorsed :) Received in clerk's office and filed therein on this the 10th day of August, A. D. 1896. N. W. Trimble, clerk.

420

Clerk's certificate.

I, N. W. Trimble, clerk of the circuit court of the United States for the southern division of the northern district of Alabama, hereby certify the foregoing pages, numbered from 1 to 846, inclusive, to be true and correct transcript of the record and proceedings (except certain original exhibits herewith transmitted by order of court) in a certain cause lately pending and determined in said circuit court, wherein the United States of America was complainant, and the Tennessee & Coosa Railroad Company, Hugh Carlisle, et als., respondent, as the same now appears of record and on file in my office.

In testimony whereof, I hereunto subscribe my name and cause the seal of the said circuit court to be affixed this 24th day of August, A. D. 1896.

[SEAL.]

N. W. TRIMBLE, *Clerk*.

421 United States circuit court of appeals for the fifth circuit.

November term, 1896. April 14, 1897.

[Extract from minutes.]

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| UNITED STATES | } No. 538. |
| <i>v.</i> | |
| THE TENNESSEE AND COOSA RAILROAD COMPANY, Hugh Carlisle, et als. | |

This cause was regularly called this day and was submitted to the court after argument by Mr. Emmet O'Neal and Mr. Frank White for appellant and by Mr. A. E. Goodhue and Mr. O. R. Hundley for appellees.

November term, 1896. April 20, 1897.

[Extract from minutes.]

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| UNITED STATES | } No. 538. |
| <i>v.</i> | |
| THE TENNESSEE AND COOSA RAILROAD COMPANY, Hugh Carlisle, et als. | |

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Alabama, and was argued by counsel.

On consideration whereof. It is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be and the same is hereby affirmed and that the appellees be condemned to pay the costs in this court incurred by them.

422 United States circuit court of appeals. Fifth judicial circuit. term, 1897.

THE UNITED STATES OF AMERICA, APPELLANT,)
vs.
 THE TENNESSEE AND COOSA R. R. COMPANY,)
 Hugh Carlisle, et als., appellees.

Appeal from circuit court of the United States for the northern district of Alabama, southern division.

Petition of appellant for rehearing.

EMMET O'NEAL,
United States Attorney,
 F. S. WHITE,
Counsel for Curry et al.

Filed May 6, 1897. J. M. McKee, Clerk.

423 In the United States circuit court of appeals for the fifth circuit.

UNITED STATES OF AMERICA)

vs.
 TENN. AND COOSA R. R. CO., HUGH CARLISLE, ET ALS.)

Comes the United States by its solicitor, the United States attorney for the northern district of Alabama, Emmet O'Neal, and petitions the court for a rehearing in said cause, the same having been decided against petitioner by this honorable court on the 20th day of April, 1897, and, as grounds for said petition, states the following:

1. That the court erred in its conclusion that the defendant, The Tennessee & Coosa R. R. Company, had the right to sell 120 sections of the land in controversy before the act of forfeiture of September 29, 1890, was passed, the ten years in which said railroad company had the right to sell the land under the granting act of 1856 having elapsed before said sale was made, no part of said road having been completed at the time within the said ten years in which said road was required by the granting act to have been completed.

2. The court erred in its conclusion that the appellant could not recover the lands lying opposite to and coterminous with the completed portion of said road at the date of the forfeiture act, September 29, 1890, because under said act said lands were not forfeited, the Attorney-General having the right, by a judicial proceeding, to declare said forfeiture.

I hereby certify that in my opinion the matters set forth in the foregoing petition for a rehearing are good and sufficient in law; that the same is not interposed for delay.

EMMET O'NEAL,
U. S. Attorney for the Northern District of Alabama.
 F. S. WHITE,
Sol. for Curry et al.

425

November term, 1896. June 23, 1897.

[Extract from minutes.]

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| UNITED STATES | } | No. 538. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY, | | |
| Hugh Carlisle, et als. | | |

Ordered that the petition for rehearing filed herein be, and the same is hereby, denied.

426

United States circuit court of appeals, fifth circuit.

Petition for appeal.—The Supreme Court of the United States of America.

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| UNITED STATES OF AMERICA, APPELLANT, | } |
| <i>vs.</i> | |
| THE TENNESSEE AND COOSA RAILROAD COMPANY, | |
| Hugh Carlisle, et al., appellees. | |

The United States of America, by their attorney, William Vaughan, and by order of the Department of Justice of the said United States of America, feeling aggrieved by the decree and judgment entered by the United States circuit court of appeals for the fifth judicial circuit of the United States in the above entitled cause on the 20th day of April, 1897, do represent that there is manifest error therein, and do hereby appeal from said decree to the Supreme Court of the United States, and pray that their appeal may be allowed, and that a transcript of the record and proceedings duly authenticated may be sent to the said Supreme Court on the United States and herewith present and file with the clerk their assignment of errors.

WILLIAM VAUGHAN,
United States Attorney.

(Endorsed:.) United States vs. Tennessee and Coosa R. R. Co. et al.
Filed March 24th, 1898. J. M. McKee, clerk.

427

United States circuit court of appeals, fifth circuit.

Assignment of errors.—In the Supreme Court of the United States of America.

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| UNITED STATES OF AMERICA | } | In equity. |
| <i>vs.</i> | | |
| TENNESSEE AND COOSA RAILROAD COMPANY, | | |
| Hugh Carlisle, et al. | | |

And now comes the United States of America, by William Vaughan, their attorney, under the direction and order of the Attorney-General of the United States, and charge that in the decree rendered by the United States circuit court of appeals for the fifth judicial circuit in the above-

styled cause on the 20th day of April, 1897, and in the record and proceedings in said court, there is manifest error to its injury, in this, to wit:

1. The said circuit court of appeals erred in affirming the decree in said cause of the circuit court of the United States for the southern division of the northern district of Alabama.

2. Said circuit court of appeals erred in not reversing the decree of the circuit court of the United States for the southern division of the northern district of Alabama in said cause.

3. Said circuit court of appeals erred in not granting the said United States the relief prayed for in their original bill.

4. Said circuit court of appeals erred in affirming the finding of fact of the circuit court of the United States for the southern division of the northern district of Alabama, that prior to the 29th day of September, 1890, the Tennessee and Coosa Railroad Company had sold to bona fide purchasers all the lands embraced in the first 120 sections, which by the terms of the granting act, it was authorized to sell in advance of the construction of the road; that these sales were bona fide and made in aid of the construction of the road.

5. Said circuit court of appeals erred in finding that the allegations of the bill that the sale to Carlisle was without consideration and colorable, were not sustained by the evidence, but that the sale to Carlisle was bona fide and based upon good consideration, and the proceeds of the sale used in the construction and equipment of the road.

6. Said circuit court of appeals erred in its finding, in effect, on the facts, that the Tennessee and Coosa Railroad from Gadsden to Littleton, a distance of 10.22 miles, was completed and in operation on and before the 29th day of September, 1890, and that the lands described in Exhibit D to the the original bill, to wit: The lands embraced in and conveyed by the deed of the Tennessee and Coosa Railroad Company to Hugh Carlisle, bearing the date of April 4th, 1887; or lands which lie opposite to that part of the road which was completed and in operation on the 29th day of September, 1890, and therefore not within the lands forfeited by the act of September 29, 1890, and in affirming the finding of fact to that effect by the circuit court of the United States for the southern division of the northern district of Alabama.

7. Said circuit court of appeals erred in decreeing, in effect, that Owen T. Holmes, the receiver, proceeded to collect the rent notes taken by him for the year 1895, and any unpaid rents for previous years, and pay to the clerk of said circuit court of the United States for the southern division of the northern district of Alabama all of the costs that had accrued in said cause in that court up to the date of the decree of said court therein, and in affirming the decree of said circuit court to that effect.

8. Said circuit court of appeals erred in affirming that part of the decree of the circuit court of the United States for the southern division of the northern district of Alabama that said receiver, on or before the 15th day of January, 1896, should file his accounts and vouchers for settlement.

9. Said circuit court of appeals erred in affirming that part of the decree of the said circuit court for the southern division of the northern district

of Alabama referring said accounts and settlement to N. W. Trimble, special master, to pass upon and report to the court said amounts, in which said special master was directed to charge said receiver with whatever sums had come into his hands as such receiver, and credit him with such amounts as he had necessarily expended in the protection of the property, collecting rents, etc.

10. Said circuit court of appeals erred in affirming that part of the decree of the said circuit court of the United States for the southern division of the northern district of Alabama which directed said special master to report what compensation would be reasonable as an allowance to said receiver and his counsel, to be paid out of the funds in the receiver's hands, or which had been deposited with the clerk of the court.

11. Said circuit court of appeals erred in affirming that part of the decree of the said circuit court of the United States for the southern
430 division of the northern district of Alabama which decreed that the receiver, on or before the 1st day of January, 1896, should put Hugh Carlisle in possession of the lands specifically described and set forth in the deed from the Tennessee and Coosa Railroad Company to Hugh Carlisle, marked Exhibit E to the original bill of complaint.

12. Said circuit court of appeals erred in affirming that part of the decree of said circuit court of the United States for the southern division of the northern district of Alabama which directed said receiver to surrender possession of the remainder of said lands mentioned in said bill and in his possession to such persons as might exhibit to him certificates of purchase from the Tennessee and Coosa Railroad Company, together with evidence of the fact that they were either purchasers from the Tennessee and Coosa Railroad Company or the transferees of such purchasers.

13. Said circuit court of appeals erred in affirming that part of the decree of the said circuit court of the United States for the southern division of the northern district of Alabama which directed that said purchasers be put in possession of the land covered by the decree, subject to whatever purchase money might be due and unpaid to the Tennessee and Coosa Railroad Company and subject to whatever right the Tennessee and Coosa Railroad Company and Hugh Carlisle had to enforce the payment of the purchase money for said lands.

14. Said circuit court of appeals erred in affirming that part of the decree of the said circuit court of the United States for the southern division of the northern district of Alabama which directed the receiver to surrender to the makers all of the rent notes for the year 1896.

WILLIAM VAUGHAN,
United States Attorney.

(Endorsed :) Filed March 24, 1898. J. M. McKee, clerk.

431 United States circuit court of appeals, fifth judicial circuit.

Order allowing appeal.

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| UNITED STATES, APPELLANT, | } |
| <i>vs.</i> | |
| THE TENNESSEE AND COOSA RAILROAD COM- pany, Hugh Carlisle, et al., appellees. | |

In this cause the said United States of America, by William Vaughan, their attorney, under the direction and order of the Attorney-General of the United States, having made its application in writing for an appeal from the decree therein rendered on the 20th day of April, 1897, to the Supreme Court of the United States, and it appearing to me, Don A. Pardee, judge of the fifth judicial circuit, that the prayer of said petition should be granted, and the said United States having filed assignments of error, it is therefore ordered, adjudged, and decreed that said petition be granted and the said appeal allowed, as prayed in said petition, to the Supreme Court of the United States to be held in the city of Washington, District of Columbia, the same to be returnable on the 23rd day of April, 1898.

DON A. PARDEE,
Circuit Judge.

(Indorsed :) Filed March 24th, 1898. J. M. McKee, clerk.

432 United States circuit court of appeals, fifth circuit.

Opinion.

November term, 1896.—Filed April 20, 1897.

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| UNITED STATES | } | No. 538. |
| <i>v.</i> | | |
| THE TENNESSEE AND COOSA RAILROAD COMPANY, Hugh Carlisle, et als. | | |

Appeal from the United States circuit court, northern district of Alabama.

Before Pardee and McCormick, circuit judges, and Newman, district judge.

By the court :

Considering that the Tennessee & Coosa Railroad Company had the right to sell and did sell the one hundred and twenty sections of the land grant before the act of forfeiture, and that the forfeiture act of 1890 did not forfeit any portion of the land grant lying opposite to any coterminus with that portion of the railroad then completed and in operation, we find no error in the decree appealed from, and it is therefore affirmed.

433 United States circuit court of appeals for the fifth circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 433 pages, numbered from A to 432, inclusive, contain a true copy of the transcript of

the record, all proceedings had and opinion of the court in the case of the United States vs. Tennessee & Coosa Railroad Company, Hugh Carlisle, et al., No. 538, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 25th day of March, A. D. 1898.

[SEAL.]

J. M. MCKEE,

Clerk of the United States Circuit Court of Appeals

for the Fifth Circuit.

(Indorsement on cover:) Case No. 16840. U. S. C. C. of appeals, fifth circuit. Term No., 274. The United States, appellant, vs. The Tennessee and Coosa Railroad Company, Hugh Carlisle, et al. Filed April 5, 1898.

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City of Chicago

(Chicago)



Filed April 13, 1899

In the Supreme Court of the United States

October Term, 1898.

THE UNITED STATES

THE TENNESSEE & GOGG RAILROAD
Company, Hugh Christie, et al.

No. 224

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

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| THE UNITED STATES | } | No. 274. |
| <i>v.</i> | | |
| THE TENNESSEE & COOSA RAILROAD Company, Hugh Carlisle, et al. | | |

STATEMENT OF THE CASE.

This was a proceeding in equity in the circuit court of the United States for the southern division of the northern district of Alabama. The United States, in 1856, granted to the State of Alabama, for the purpose of aiding in the construction of certain railroads, constituting internal improvements of the United States and ways of commerce, a portion of the public lands held in trust by the Government for the people of the United States, and among others, certain sections lying along a line from Guntersville to Gadsden, a distance of about 36 miles. The State turned these lands over to the Tennessee and Coosa Railroad Company, an Alabama corporation, to be held and applied as provided in the act of Congress. That act required completion of the road within ten years, and the disposal of the lands by the State only

in a specified manner. One hundred and twenty sections of land were certified to the State at an early date by the usual information certificates appropriate to grants *in presenti* when no patents are provided for, and as to some of those lands indemnity certificates passing title after selection and approval. Nearly all lands were sold by the company, although the road was not completed within ten years, and the Government alleges that they were not sold in the manner provided in the act, even as to the 120 sections, or 76,000 acres. The Government in its bill alleged that none should have been sold, because *all* the sales took place after the end of ten years; and, going into details as to some particular sales to one Hugh Carlisle, further alleged that these were colorable and fraudulent, for the purpose of defeating the reversion to the United States. It also anticipated the defense that Carlisle was a *bona fide* purchaser, and denied it. A decree was asked declaring all the approvals and certificates by or for the railroad company vacated, and asking that all right, title, or interest of the defendants be divested and vested in the United States, and especially that the sales to Hugh Carlisle be set aside and canceled on the local records, and for further relief, as might be proper. An injunction was asked, and also a receiver, who was appointed and acted until discharged as useless, when everything was turned over to Carlisle, because he claimed to be a *bona fide* purchaser, and it was held that there was testimony to support his claim. (R., p. 159.)

In brief, the bill is one alleging that all the lands intended to pass under the act of 1856 rightly belong to

the United States, and is substantially a bill to quiet title to those lands and recover title where necessary and for an accounting.

It appears that some of the sales by the company were for cash, but very few of them. Others were not paid for except in part, and a list of these is in the record (Exhibit A to Carlisle's answer). These and the lands sold to Carlisle amounted to 83,522.84 acres, the lands sold to Carlisle being 41,149.84 acres. The precise number of acres in excess of the 76,000 acres, or 120 sections, is not ascertained by the decree of the lower court, which denied, upon two grounds, the relief prayed for—that the company had had a right to sell 120 sections, and as to 17,410.33 acres, the last lands sold to Carlisle, that these were opposite a portion of the road completed before the general forfeiture act of 1890, and hence were not forfeited. As the road was completed only to Littleton, in section 20, township 11, range 5 east (12 Land Dec., 255), and these lands include parts of sections 9, 11, etc., and lands in township 10, I think this is a mistake. The court of appeals affirmed upon the same grounds, and also without separating any lands except the 17,410.33 acres from the 120 sections.

Carlisle's answer asserts that all the lands were certified to the State; but he seems to mean all *his* lands, and, as to part of these, i. e., the 17,410.33 acres, to mean that they were certified under an act of April 10, 1869, to a company entitled to an undivided moiety, and not to or for the Tennessee and Coosa Company, claiming the other half.

He also asserts that all the lands as to which he holds notes (the unpaid-for lands) were among the 120 sections first certified. These seem not to have been conveyed, but contracted to be sold.

We hope to submit a map, without which it is difficult to know the correctness of these assertions of Carlisle. It is believed that they are not entirely, but nearly, correct.

The answer of the Tennessee and Coosa Company states that the 23,739.51 acres first sold to Carlisle were approved to the company as part of the first 120 sections, as the answer of Carlisle says that they are within such sections, and that the 17,410.33 acres are opposite completed road. The 42,372.84 acres sold but not paid for are treated by the courts below as belonging to Carlisle, the trial court merely remarking that he succeeded to the right of the company to the unpaid purchase money, and giving no reason.

It would seem, however, that he claimed merely to hold the notes as collateral for about \$3,000 of debts alleged to be due in 1887 from the company, and, as the purchasers refused to pay, that these lands may admittedly belong to the company, if they do not to the Government. Practically all the purchase money seems to be unpaid. No party is disputing the claims of the Government except Carlisle (now his representatives), the Tennessee and Coosa Company, which claims no title to the Carlisle lands and says the notes for unpaid-for lands are in Carlisle's hands as collateral, and two purchasers of 40 and 80 acres. All other purchasers and the settlers are willing to have the Government succeed.

ASSIGNMENT OF ERRORS.

1. The court of appeals erred in affirming the decision of the circuit court.
2. In not reversing it.
3. The court of appeals should have reversed the decision and sent the case back with directions.
4. It should have directed a decree in favor of the United States.
5. It should have directed a decree in favor of the United States as to all lands not within 120 sections certified along a continuous 20 miles of the road, or at least those certified only by information certificates and lists, i. e., place limit lands.
6. It should have directed the ascertainment and separation of the lands by the court, or with the aid of a master, and confirmed to the United States all lands not sold and not within said 120 sections, and all lands without said sections whether nominally sold or not.
7. It should have adjudged that Hugh Carlisle was not a *bona fide* purchaser of any of the lands, and directed a decree accordingly in favor of the United States.
8. It should have adjudged that he was not a *bona fide* purchaser of the 17,410.33 acres not within the said 120 sections, and directed a decree accordingly in favor of the United States.
9. It should have directed a decree in favor of the United States as to the 42,372.84 acres not conveyed or paid for.
10. It should have directed a decree in favor of the United States as to lands not within either the said 120 sections or the 17,410.33 acres whether sold or not.

11. It should have reversed the decision of the circuit court for the reasons stated in the assignment of errors submitted to it, and have directed a proper decree or other proceedings.

12. The court erred in not directing the action hereinbefore stated as proper to be directed, or further proceedings with a view to that action.

13. The court erred in not directing a decree that the unpaid purchase money for such lands as were sold, but not properly sold, be collected or collectible for the United States.

14. The court erred in not directing that rents due for lands not properly sold be collected or collectible for the United States.

BRIEF.

It has been a principal subject of discussion in this case whether Hugh Carlisle is a *bona fide* purchaser or, on the other hand, is not only not a *bona fide* purchaser of all or any of the lands, but has taken the title with a view to avoiding the recovery of the lands by the United States. In this discussion the charge of actual fraud or colorable sale has naturally excited special interest, and the trial court seems to have regarded it as sufficient to find, in the case of the lands claimed by Carlisle, that the "charges of fraud" are "not sustained by the proof—at least by such measure of proof as is required in a case like this," and to raise a doubt that the accounts and settlements of Carlisle with the company can be considered at all, because "the company obtained the title from the State of Alabama, acting under a statute of the

State accepting the grant of land and the trust created by the act, and in the case of the *United States v. Des Moines Company* it is held that the knowledge and good faith of a legislature are not open to question." This latter proposition needs no discussion, as no one is questioning the good faith of the State.

The court does not make any distinction between the question whether Carlisle is a *bona fide* purchaser and the question whether he is a fraudulent holder for the company. The fraud is required by it to be proven in the most absolute manner by the United States.

In view of this attitude of the court we submit at the outset that the question whether Carlisle is a *bona fide* purchaser went to the court of appeals unaffected by any supposed determination on the facts by the lower court, and, as the lower court did not pass upon that question at all, it comes here also unaffected by the rule of convenience that a supreme court will be disinclined to reverse upon a new decision by it as to questions of fact.

The bill treats the fraud as merely part of a plan to enable Carlisle to set up and claim that he was "a purchaser for value and in good faith from said railroad company," when, as the bill alleges, he was quite the opposite. And the answer of Carlisle takes issue with the allegations and does set up that he was a purchaser in good faith and for the consideration named in two deeds to him. The railroad company sets up the same thing.

This is not a criminal proceeding. We bring Carlisle into court as a party because we know that he claims to be owner of some of our lands granted to the State, and, anticipating his pretense of *bona fide* purchaser, we deny

that, and go further and allege that he is quite the opposite—a fraudulent purchaser.

The trial court may be right in thinking that the fraud charged should not be presumed, but must be distinctly proved, as alleged, for the court to find that fraud; but as soon as we show—if we do show it—that the lands were our lands, and that the company had no power to sell them, not only are we not required to make out absolute proof or any proof of fraud committed by Carlisle, but the burden of proof is entirely shifted from us. If he sets up, notwithstanding all this *prima facie* case of ours, that we ought not to have our lands because he is a *bona fide* purchaser, the burden is on him to show that he is. And he does set up that defense.

We must make out our right to the land, so far as not affected by the principle of *bona fide* purchase, and anyone who relies upon that principle to deprive us of our land, thus shown to be our land, has very distinctly to prove that he comes within the protection of that principle. We think Carlisle does not satisfactorily prove this.

This the trial court naturally, but erroneously, lost sight of, and this court should examine the evidence to see if the defense is made out.

If Carlisle was a *bona fide* purchaser, obviously the charges of fraud were of no consequence; if they were not true, yet it would not necessarily follow that he was a *bona fide* purchaser. The charges of fraud have tended to obscure the issues, which are, in effect, first, are we entitled to the lands as a matter of law and title; second, are they nevertheless in the hands of a *bona fide*

purchaser who should not be disturbed. To establish the first proposition in our favor shifts the burden to whomsoever asserts a *bona fide* purchase. We properly bring in as parties those expected to assert that, and we also properly say why we bring them in, and suggest a doubt that their pretensions, if any, can be sustained. That is the theory of our bill, and we submit that the trial court could not properly dispose of it as it attempted to do, and that the evidence should be weighed by this court without any prejudice derived from the trial court's remark about the insufficient measure of proof of a particular alleged *fraud*.

2.

It is alleged by us that all the lands granted to the State for this line of road were forfeited to the United States by the terms of the granting act, because ten years elapsed without the completion of the road or any serious progress in that direction, and *no* lands had then been sold.

The general answer to that is that 120 sections could be sold in advance even of beginning the road, and the case of *Courtright v. R. R. Co.* (21 Wall., 310) is relied upon in support of this; the case of *Schulenberg v. Harriman* (21 Wall., 44), and the case of *United States v. Loughrey* (172 U. S.).

Conceding this, for the present, it does not justify the affirmance of the decree in this case, which manifestly deprives us of more than 120 sections.

In order to meet this objection, however, it is alleged that 17,000 acres are opposite a part of the road (10

miles) which was completed when the general forfeiture act of 1890 was passed, and that that act did not forfeit, or, in other words, confirmed the sale of these lands.

But this does not account for all the lands claimed to be granted to the company, and we are seeking a remedy as to all of them.

It would seem, therefore, on the face of things, that the decree of the trial court and its affirmance were erroneous and contrary to equity.

The fifth paragraph of our bill and the second of the company's answer and second of Carlisle's distinctly put in issue the right of the United States to all lands granted by the act of 1856, and we are entitled to a decree accordingly.

3.

The act of March 2, 1896, concerning *bona fide* purchasers and the bringing and maintaining of suits where they are concerned, will doubtless be considered in this connection by the court, together with its own opinion in the case of *United States v. Winona and St. Peter Railroad Company*; and, in view of these and the Courtright Case, we wish, first of all, to direct attention to the 17,410.33 acres lying beyond the 120 sections which are now, and, as it appears in the testimony, were by a lawyer, when the two deeds to Carlisle were made, said to be ruled by the Courtright Case. As to the one deed, accordingly, there was a warranty; the deed of the 17,000 acres is, on the contrary, a mere quitclaim deed.

And for the present we shall assume that an outright and not a colorable sale took place, in order to submit a

proposition of law as to *bona fide* purchase, stripped of all controverted facts, and assuming that the definitions of such purchase in the Winona and St. Peter Case are applicable in most respects to a purchase of these lands.

Let us see what those definitions of good-faith purchase by this court really are, in order to consider a question of *power* and *notice*, assuming the case in all other respects like the Winona and St. Peter Case, and assuming the definitions referred to correct and, but for *this question*, applicable.

The Department of the Interior has *general power* to dispose of public lands of the United States, and when it erroneously disposes of them it is not acting without power to act, and a title passes.

In such cases Congress has seen fit to confirm the title when in the hands of *bona fide* or good faith holders after erroneous or misleading patent or certification.

A State has no control over United States lands, and can not pass any title to them except as specially empowered.

As to these 17,000 acres of lands outside the first 120 sections, there was no certification to the State except to give or indicate a moiety granted to *another* company. But let us ignore that difference between this and the Winona and St. Peter Case.

The State held the legal title by and under the granting statute, but was authorized to sell "only in the manner following."

The manner following contained the prerequisite to any sale that the governor should make a certain certificate to a certain fact.

That certificate he did not make.

Hence the title is not in the hands of the pretended vendee Carlisle, and so he is not a *bona fide* purchaser.

The pretended sale by or on behalf of the State was *without power to sell*.

In the Winona Case, in 165 U. S., this court requires that the land shall be public land in the statutory sense, evidently meaning that it is beyond the *power* of the Land Department to dispose of any other and *within* its power to deal with practically all that is such.

Here the State was intrusted with the lands, without power to dispose of them except "in the following manner"—first, a certificate of the governor to the existence of a certain fact.

The State was entrusted with the legal title and made the agent of the United States, with a very special and limited power to dispose of a few lands in a *certain event*, and *no other*.

It was not given a beneficial title to them apparently complete and good, as usually is the case in a direct grant to a company. It was an intermediary and agent for a sole purpose. No title to itself for its own use was intended. The State as a State, as a government, was permitted to do what the Interior Department does; but only for one transaction, to be carried on "in the manner following," and no other. The Interior Department is a general agent.

If the Interior Department, in passing to private persons the beneficial title, must confine itself to its power under the law in order that a *bona fide* purchase may exist, why not the State?

In the Supreme Court's opinion reference is made to a provision authorizing a purchaser from a private company of lands granted, to all appearances, by Congress, *to buy these from the Government*; but there Congress had *itself* conveyed a complete legal title (good, without patent) to the whole of particular sections—a title final, beneficial, with metes and bounds defined. It was an *apparent* perfect title to *any given tract*, and could only be seen to be otherwise by a new construction of the grant or an examination of matters *outside of the statutory conveyance in present, or both*. No condition was attached to the title.

It was the act of the Federal Government itself to put into the hands of the private company this apparent perfect, alienable, unconditional title, and so Congress was willing to *sell* such lands, when purchased in good faith, to the purchaser.

But from this the court does not deduce as a general proposition that there need not be a *title* given by one who has title in fact, and power to sell, or else a deed by one who has gotten an *apparent* complete title of his own, through the act or fault of the plaintiff, which title the plaintiff is estopped to deny to be what *he* has made it appear to be.

If A, not having title to my land, gives a deed to it as his own, *I may be estopped* to deny that it was his land, and the purchaser, in equity—from which the whole notion of good-faith purchaser comes—is as safe from me as if A had owned the land.

But if A gives a deed to my land as *my* land, he being for some things my agent, and if I am *not* estopped to show

the truth that, while I gave him in trust the legal title, I gave him no power to sell the land except after a future event, which never happened, the so-called purchaser, who really has bought nothing at all, is no purchaser at all.

This present so-called purchaser, Carlisle, is precisely in this latter predicament.

No purchaser of a large body of these United States lands could allege that he did not know that the only power of the *State* over them was that conferred by the act of Congress of 1856.

What appears manifestly and without extraneous proof upon the face of that law no purchaser under the State can say he did not know:

But it appeared on the face of that law that as a condition precedent to the State's doing anything with *these* lands outside the 120 sections, the governor must certify that 20 miles of road have been built.

Now, who is it that must claim not to know that the governor had not so certified, when the supposed purchase was made?

The *builder of the road*, who knew that no such certificate could have been made, for the simple reason that no such 20 miles of road had been built; the builder of the road, who was also a most active director of the railroad company, who had been connected with the road since the year 1844 and contracted in 1859 to build it, as he says in his answer. Down to 1885 but 5 miles of the road had been built by a railroad company other than the Tennessee and Coosa in 1870-1885. Afterwards, and before September, 1890 (finishing a few days before the

forfeiture act of that year), Carlisle extended it to a total of 10 miles and a fraction.

What the act of 1856 says on its face we are at perfect liberty to assert and do assert, and we say that such a purchaser is no purchaser, for he got no title and we are not estopped to say so. Carlisle expressly admits that he bought with knowledge that no 20 miles of road had been built. (R., p. 169.) He also speaks of his company's getting the act of 1856 passed.

Whether a man that knows he is getting no title can be said to be a "good-faith purchaser" we submit to the wisdom of the court.

The case is wholly different from the Winona and St. Peter Case in 165 United States.

There the Interior Department was a *general agent* for the disposition of *all public lands*, and though facts existed in the case of any part of a section tending to except it from the general conveyance of many sections, it was natural to presume that the Secretary had *ascertained the contrary* before certifying as he had done.

Here the very man who was creating the fact which was a condition precedent to the existence of *any power to sell* is seeking to escape from the knowledge that he had not created that fact and that no one else had.

There is no intention in that decision to say that a purchaser was not bound to know the tenor of the grant under which he claimed title, but only that he was not bound to know all extraneous facts upon which it might possibly be supposed to put one upon inquiry and not bound to know that for many years the Interior Department had mistaken the meaning of the grants when

certifying. These lands were never certified at all except properly for another company owing a moiety, and so the Interior Department never misled anyone about them by "erroneous" action.

One who knew the tenor of the act of 1856, and was the builder of the road, knew that the State could not dispose of the land, for the act showed this on its face.

There had been no erroneous certifying by the Secretary. He seems to have properly certified 120 sections to the State shortly after the act of 1856 was passed, to be held as therein provided, and disposed of only in the manner thereby authorized. If information certificates as to place limit lands among these 17,000 acres had been issued, however, they would not have been intended to and would not constitute the certifications or patents authorized by law to transfer title, and would have added nothing to the title passed by the act of 1856 itself.

What is to estop the Government? What impairs its equity, when it asserts that these lands equitably belong to it?

The supposed purchaser, without our resorting to *constructive* notice of anything, knowing the law, as manifestly he did and knowing the facts, acted with his eyes open to all the rights of the United States and all the lack of power of the State. It is needless to say that the company was precisely in the situation of the State as to lack of power to sell.

Carlisle bought nothing, was misled as to nothing, was ignorant of nothing, and got nothing.

The Government did not need to watch the State or follow its operations. It protected itself by the lan-

guage of the original act, certainly so far as *this* purchaser is concerned. When the fact existed and the governor was willing to give his solemn assurance to that effect, then the State was to sell certain lands turned over to it by the United States, and before that it was powerless to do so. Of this everyone was informed by the law, but especially one who bought and built under the law. And such a one had the most absolute knowledge of the nonexistence of the certificate, because he knew the fact did not exist. (165 U. S., 485.)

4.

But it is said that these 17,000 acres of land were in 1890 opposite constructed road. Part of them were, part were not, and the former may now be considered.

It appears that at the time of supposed purchase and long after—down to and beyond the date of the forfeiture act of 1890—no 20 miles had been constructed. The Tennessee and Coosa and the State, under the act of 1856, never constructed 20 miles.

The general forfeiture act of September, 1890, intends to forfeit lands opposite unconstructed portions of road. It intends to forfeit them *for that reason*. It intends by no means to say that no lands are to be otherwise and for other reasons forfeited; that all conditions precedent in all cases of land grants are waived. It purports to waive nothing, but to forfeit for a cause common to all the old grants of lands for railroads—failure to construct prior to September, 1890.

The courts below the trial court very distinctly take the position that only Congress could insist upon the forfeiture and that by the act of 1890 it omitted to do so and did not do so by any other law.

The cause of forfeiture arose under the act of 1856 and the Attorney-General asserts the forfeiture in this present proceeding. When he asserts it the Government asserts it, as he is the Government for such a purpose, being occupant of the office of Attorney-General, an office borrowed bodily from Great Britain. We think there was not only a forfeiture, but a trust which has failed, leaving a mere naked title as against us, which should no longer embarrass us, and that on the Attorney-General's application the court should brush it away, whether the lands are opposite completed road or not.

It is true that the court says, in reference to a similar grant (*United States v. Loughrey*, 172 U. S., 212), that it by no means concedes that the title given the State was held by it as a trustee; but that was an immaterial question, or so held, and the point was simply not conceded. We do not know that, in any technical sense, it is necessary to establish it in this case, for in the same opinion an immediate right of possession was argumentatively conceded, in case there was a breach of obligation on the part of the State (p. 216), and we are not alleging an immediate right of possession for the purpose of an action of trover to recover severed timber, but rather enforcing the right to assert title as against one who, under a void sale, claims it.

It makes very little difference what we call things, so long as the power of the State was limited and it could

not sell the lands except as the work progressed and after a certificate that 20 miles had been constructed. When the land is found in possession of a pretended vendee of the State, buying outside of that trust, or whatever it should be called, a court of equity will hardly tell the grantor he can not maintain a bill against that vendee, who had full knowledge of the trust or power and its limitation. How is he to enforce the restriction in the grant? Is he to lose his land upon a disregard of that restriction by a railroad company which seeks to abuse the confidence of the State, and is equity powerless to help him? These lands are unsold, because the pretended sale is void, and the act of 1856 says that all lands unsold shall revert. The forfeiture act of 1890 was a re-entry and more; it expressly revested the unsold lands in the United States. Within the meaning of the transaction, lands sold were those sold in the manner provided by the act of 1856 as the *only* manner, and those not so sold were intended to revert. The law should be read as a whole, and so read, there is no doubt that such is its meaning.

That act of 1890 was intended to take away lands and not to grant them, and it is too well settled to need discussion that lands and rights of the public can not be granted away except in the most *explicit, affirmative* terms. But we do not understand the courts below to contend that the act of 1890 did more than *omit* to express a Congressional intent to so insist. They simply *deny the Attorney-General's power* in the matter.

It made no grant to the company of the 17,000 acres, or of that part of them opposite completed road.

To recapitulate :

We are claiming title to all the lands supposed to be granted, and the suit is practically to quiet and recover title to all of them. As to these lands, certificates or patents in the statutory sense need to be canceled only as to the indemnity lands, within the first 120 sections.

We bring in as parties all whom we know to be adverse claimants, in order to get rid of their claims.

As to Carlisle, we incidentally allege that he is a mere straw man, representing in reality the railroad company in order to make the lands appear to be *sold* lands and himself a *bona fide* purchaser. The more important question is, is he a *bona fide* purchaser, and that is for him to show, after our right is made out.

He claims to be that as to lands not within the 120 sections, and we point out that he is not shown to be a *bona fide* purchaser of *those lands*, even in the Congressional sense of the phrase discussed in the Winona and St. Peter Case, because he knew in fact and fully that the State or company had no right to dispose of them.

If it is claimed, however, that title to lands opposite constructed road was confirmed by the act of 1890, and some of these lands were opposite such road, we deny that to be the intent of the act of 1890.

Even upon the principles as to *bona fide* purchase laid down in the Winona and St. Peter decision, we thus show that these lands claimed by Carlisle under his *quit-claim* deed ought to be adjudged to us.

This leaves for consideration lands similar to these that is, not within the first 120 sections—held by *others* than Carlisle, and what we shall say as to our right to them will apply to a portion of the ones he claims.

The road being 36 miles and a fraction long, and the 120 sections absolutely required to be along 20 consecutive miles, and being in fact, as certified before the war of 1861, at and near the Guntersville end, 16 miles and a fraction of road, at least, remain to be considered. Ten miles, beginning at the Gadsden end, were constructed before the act of 1890, leaving at least 6 miles; so that, obviously, the easy method resorted to by the lower courts of dividing all the lands into 120-section lands and lands opposite constructed road ignores our rights along 6 miles, to say nothing of the large body of lands along the 20 miles referred to, but *not* in the 120 sections of place and indemnity certified before the war, and opposite *uncompleted* road in 1890.

We say, then, as to all lands *outside* the first 120 sections and not opposite the constructed 10 miles of road, that Congress in 1890 resumed title and declared them restored to the public domain.

We are seeking to quiet title to them, not to recover it. That has been done already, so far as Congress was able; and Congress was able to do this, unless any of the lands were in the hands of persons whom the *courts of equity* define to be *bona fide* purchasers.

If Congress, however, has voluntarily permitted other persons to have title, it could do that.

But our next proposition is that the statutes of Congress relating to *bona fide* purchasers or good-faith purchasers, as discussed in the Winona and St. Peter Case, do not give title or confirm title to such lands as these.

These lands were never certified, erroneously or otherwise, or patented. They were never authorized to be sold, in the absence of the governor's certificate. Any pretended sales of them were absolutely without power and void.

The act of 1890 absolutely reclaimed and restored the title. Since then it has been in the United States, and the lands *part of the public domain*. The law does not regard them as in the hands of anybody but the Government.

This seems to be clear; and as all sales were void, and the act of 1856 was notice to all the world that any such sales were unauthorized and no one was misled by any certifying, there can be no *bona fide* purchaser who, notwithstanding the act of 1890, must be protected as a genuine ordinary *bona fide* purchaser and can hold on to the lands and no *bona fide* purchaser in the new statutory sense.

We ask, therefore, a decision that absolutely all lands not within the 120 sections, and not opposite the constructed 10 miles, belong to the United States.

As to those opposite the 10 miles, even those not claimed by Carlisle, we think the same decision must be made as to all persons claiming them, his case merely being an extreme one. The lack of power and the

notice by the face of the act of 1856 were common to all cases where lands beyond the first 120 sections are claimed. No certifying misled any one. The act of 1890 granted or confirmed nothing. It was simply a forfeiture act, and simply forfeited title opposite uncompleted road for one reason, as the Attorney-General is seeking to question title opposite completed road for another. Our bill filed had the same effect as the act of 1890, in asserting the rights of the Government.

No building of the road after the passage of the act of 1890 was authorized. The granting act was thereby repealed and ended. Nothing could thenceforth be earned by a pretended compliance with it, and all that is said in the record about what was done by an entirely different railroad company not claiming the land grant and for its own purposes, after September 29, 1890, is irrelevant to this case.

The lands not being certified or patented do not come within the gracious dispositions of the acts of 1887 or 1896, so far as the title of the United States is concerned. Section 5 of the former act does not seem to apply to them, but if it does, it can not affect this suit, for it distinctly recognizes that the lands it applies to belong to the United States.

The principles of the Winona and St. Peter decision do not extend to these lands outside of the 120 sections, and Congress has not waived its rights as to any of them, whether opposite the constructed 10 miles or not.

This leaves for consideration the lands in the 120 sections certified in 1860 and thereabouts, the indemnity lands by legal certificates and the others by mere information lists unknown to the laws. These others are not affected by the acts of March 2, 1896, etc., which manifestly concern *erroneously issued titles*.

Some of these are claimed by Carlisle, under his warranty deed. Some seem to have been sold to others for cash; some are included in those "sold" to others by the company long after the ten years allowed for building the road had expired, but not paid for. Notes for the purchase money due the company for these and other lands are in question. These seem to have been put into the hands of Carlisle as collateral for a debt; but the real *proven* debt seems to have been paid and overpaid and twice paid, and he still held the notes. The purchasers have refused to pay, believing that the lands belong to the Government. They do not claim adversely to the Government's contention in this suit, but are willing to have it succeed.

The trial court, without explaining itself, and without separating the lands represented by the notes, with regard to those in and any out of the 120 sections or otherwise, treats the notes as belonging to Carlisle. He "succeeded to the rights of the company." Carlisle says the lands are all in the 120 sections, and probably this is so.

It is apparently contended on the other side that the 120 sections are lands the title to which could be disposed of, under the Courtright decision, even after the

ten years expired, and that being such, whether they are to be regarded as still in the hands of the grantee and therefore not sold within the meaning of the act of 1856, and whether sold for the purposes for which they were to be sold—in fact, all questions about them are regarded as irrelevant, in view of the Courtright Case.

We think the Courtright decision has been somewhat misunderstood and a good deal overstretched in application, and that, even if not, we still have some equities with regard to the 120 sections, *even where deeds were given*, as in Carlisle's Case.

That case and *Schulenberg v. Harriman* were between individuals, not suits by the Government asserting its rights.

In the Courtright Case the grant was of 1856; grading was done by Courtright in 1857 and 1858, and the 120 sections sold to him and others *in those years*. The sales were held to be good, and we see no reason to doubt that they were.

They were made in good faith to raise money for preliminary work on the road, took place promptly after the act was passed, and in all respects were legitimate transactions, in accordance with the very terms of the law.

But that is not this case. Our grant was of 1856 and the sale of these lands took place wholly after the ten years limited for the completion of the road had expired, and in a very questionable manner, so far as Carlisle's deed is concerned.

The Courtright Case says nothing but what the act of 1856 says, and has no bearing upon the question here.

But it is said that in *Schulenberg v. Harriman* (21 Wall., 44) we have a decision against us. But that case, like the Loughrey decision, is a suit concerning timber, and what is decided is that title remained in the State, so that Harriman, as agent of the State, properly seized certain logs wrongfully cut by Schulenberg, a trespasser on these lands of the State.

That is the whole decision. No question of a power of the State to sell, subject or not subject to the grantor's rights, was involved, and any expressions on that subject are mere dicta. The case, in short, is identical with the Loughrey Case. In the Loughrey Case, however, a forfeiture act had been passed, but not until after the timber was cut, and a present right of possession did not then exist in the United States, at least as to the severed timber, so that trover would not lie.

It must be obvious that these cases are not in point.

Here the United States has passed a forfeiture act, and is not alleging that it had at a given time before that an immediate right of possession; but that from the time of forfeiture incurred, now that it has been enforced by the grantor, no *title* as against the grantor to lands then unsold could be given.

The act of 1890 may be said to relate back, for the benefit of the grantor asserting the forfeiture, to the forfeiture, so far as *title* is concerned when title is claimed by the Government's Attorney-General.

That is the practical effect. We assert that lands unsold in 1866 could only be sold subject to the rights of the grantor. If they were sold, only the grantor could complain, or question or defeat the sale. Like an

overdue note, they were taken with all the equities liable to be enforced, and, unlike such note, could not possibly be in the hands of a *bona fide* purchaser in any Congressional or judicial sense of the phrase, because the law on its face was notice of the rights of the Government to anyone buying after 1866.

The condition subsequent as to completing the road applied to all lands *unsold* in 1866, whether in the 120 sections or not.

The record shows that Carlisle knew all about the act of 1856 and was aware of the very question we are discussing, but *anyone* buying these lands *under that law* must be presumed, in fact as well as in law, to have known its plain terms. It was part of his chain of title and the chief part. He needed no extraneous information to see that the ten years had long since expired, and that the lands were forfeited to the United States.

As Sheppard's Touchstone (p. 125) is quoted in *United States v. Schulenberg*, we quote the following from page 120:

And if he that hath the estate grant or charge it, it will be subject to the condition still; for the condition doth always attend and wait upon the estate or thing whereto it is annexed; so that although the same do pass through the hands of an hundred men, yet is it subject to the condition still.

The lands unsold in 1866 were unsellable, except subject to the right of the Government from that time to enter and take them. That was the condition of the grant, if it is not to be regarded as more than a private deed, and that condition could not be gotten rid of. No

better title or estate than that was in the State or company under the act of 1856 and no better could be transferred to others.

See also:

Jackson v. Tapping, 19 Amer. Dec., 515; *Moore v. Pitts*, 53 N. Y., 89; *Cross v. Carson*, 44 Amer. Dec., 745; *Swann & Billups v. Larmore*, 70 Ala., 564.

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But even if all this is erroneous, decisions of courts usually proceed upon certain assumptions.

Suppose it is true that in a perfectly fair and proper transaction the lands could be sold in 1887 freed from the condition, we are dealing here with a different state of facts and what seems to us a mere scheme to hold on to lands which since 1866 the Government has been threatening to recover from the State, or what is the same thing here, the company.

In equity, it seems to us these 120 sections should be regarded as unsold lands down to the act of forfeiture of 1890, by reason of this scheme and palpable effort to show title out of the company so far as the Carlisle lands and the unpaid for lands are concerned.

The record seems to us full of evidence of such a scheme. In one place the lands are Carlisle's; in another, he gives up all his rights on them to the company. In one place, he pays cash; in another, he takes the lands for an old debt, exaggerated to \$85,000, the lands valued, however, so as to practically pay that. He clearly gets and pockets that much *cash* in consideration of giving up his claims to the lands, and yet he owns them just as

before. His debt, with others, amounts to \$25,000 and shortly after to \$85,000, and even this does not answer the exigencies of this case, and it swells to grander and vague proportions. His debt of \$85,000 is about paid, and yet he holds on to \$100,000 worth of lands as collateral security. He holds the lands and road under a mortgage of the whole, and owned nearly everything as stockholder. And so the story winds and twists until the head swims in trying to keep up with this ubiquitous man, who can not speak of himself long without speaking as though he were the railroad company and the whole of it, and yet has parted with every share of stock.

We believe courts of equity endeavor to get at what is fair and right, and often rip up apparently good legal transfers in order to do so.

This is not a criminal case, but a case in equity, and we expect all an individual would in equity be held entitled to get.

The plain facts are that we are being deprived of a large amount of our property on what are pretexts rather than substantial reasons.

The company, *not the State*, owes Carlisle a debt of \$11,000 before 1861, for alleged grading and the like. He is practically paid off in 1887, and overpaid, for it is in evidence that the lands he got were really worth far more than his debt. Still, he holds on to 42,372.84 acres of our lands, admitted to be worth \$104,000, other lands admitted to be worth \$80,000, cash from \$90,000 to \$100,000.

It does not appear that the company was insolvent all the time that debt of \$11,000 was owing, and we seriously

doubt that this court will overlook the extraordinary use made of that small debt, to the profit of so prominent a member of the company, or will close its eyes to the evidences of imposition upon the United States and the State, to say nothing of any stockholders of the company. The debt could have been early paid by selling a few lands to others, if money was lacking.

The United States did not turn over this grant to the State, nor the State entrust it to the company, for the benefit of the Company, but to accomplish an object of internal improvement. The payment of the company's small debts, over a generation old, and the discharge of the liability of the company to damages for not paying them sooner, were not the objects of the State or of the United States. The lands were not given except to be used as means to accomplish the building of the road, and the sales to Carlisle tended in no way to accomplish that aim, nor were they so intended. Not an item of road building was expected to follow them.

The whole matter looks like a scheme to benefit Carlisle and not to build the road, and to benefit the company, at a time (February, 1887) when Congress was moving to secure an adjustment of land grants and the recovery of lands granted, and talking about *bona fide* purchasers. The general adjustment act was approved March 3, 1887. The Commissioner of the Land Office had been stirring things up during the previous year, and a pretext was made of this old barred debt to get these lands out of reach of the storm. The company owed Carlisle, but Carlisle seems to have been the company, and so owed himself.

It seems to have been deemed convenient just then to have Carlisle appear to be a purchaser for cash of a large part of the lands, and as this left the sold but unpaid for lands, it seems to have occurred to someone, at some uncertain time, to turn these over to him.

The court will weigh the evidence bearing on this branch of the case, and we ask that it do so without solely regarding the mere question of positive fraud by Carlisle, but in order to ascertain whether principles and decisions applicable to other cases and sought to be applied here ought to be so applied, in view of all the circumstances; or, on the other hand, the assumptions made in those cases can not be here, and equity requires a disposition of this case otherwise—as, for example, on principles concerning a trustee's duties, contracting with one's self, constructive fraud, and fair dealing generally. Mr. Carlisle, part of the company, and as such a trustee as to these lands, taking them over to himself as debtor, was, it seems to us, required to make these transactions appear as clear and free from taint as transactions can be. It does not seem sufficient for the parties concerned to deny the existence of a formal secret trust title at the time the deeds were made. The company, somehow, did continue to own the lands, and seems to have gotten Carlisle to relinquish his "claim" in 1888. (R.; p. 194).

He appears to have had nine-tenths of the stock of the company (R., p. 195), and somehow to have had possession of all the company's property. (Ibid.)

He still claims all the lands, after releasing all claim to them, and no explanation is offered.

He says the company gave him a mortgage in 1883 on everything it had (R., p. 151), this mortgage being the resolution of 1883 (R., p. 88). Is it not to this mortgage rather than to the deeds of 1887 that the transaction of 1888 (R., p. 194) seems to refer? Otherwise, why had he a mere "claim upon the lands of this company?" Does not this suffice to raise a probability that the deeds were somehow not absolute?

What we are saying now about the assumptions made in other cases and improper to make here is important, if we are wrong in supposing that whoever took the lands in the first 120 sections after 1866 (and especially Carlisle), took them subject to the condition of the act of 1856, that all lands unsold in 1866 should be forfeited to the United States if the road was not completed, which, of course, it was not in 1866 or 1887 or 1890.

But we would not be understood as suggesting *any doubt on that* proposition. If there were any, as a matter of analogy from the interpretation of deeds and conveyances, we submit

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that the act of 1856 is a statute of the United States and not a private writing.

It should receive a reasonable interpretation. It is not a deed *and* a law. It is only a law. Courts sometimes, considering certain of its effects, call such a statute a deed, contract, or grant; but this is a mere allusion to what some of its effects are. It is an act of Congress, and as such, supreme law of the land.

So regarded, can there be a doubt that lands unsold in 1866, if the road was then unfinished, should become the property of the United States?

Was not the statute a law intended to take away as well as to give title? Is a law itself to be interpreted as would be a private paper made subject to the law? (See *M. T. & K. R. R. v. Kans. Pac. R. R.*, 97 U. S., 491.)

The intent of the statute may have been, as held in *Schulenberg v. Harriman*, such that third parties could not meddle with the lands, if the Government did nothing to assert its rights. But are not those rights statutory rights which became complete in 1866, not as rights of immediate possession capable of sustaining an action of trover against a third person, but as rights of property? An owner may have no right of immediate possession, but he is none the less owner. It seems to us that the courts have gone quite far enough in assuming that a law of Congress is a mere private deed, and that this case affords a very fair opportunity for observations as to the supreme law of the land, which is as high as any law relating to private conveyances and as much law as any other.

The Loughrey Case, the Schulenberg Case, and the Courtright Case, if confined to the issues litigated and decided, viz, whether an immediate right of possession existed, whether a State officer could not take timber from a trespasser on the lands, and whether 120 sections of land could be sold within the ten years in advance of building the road, do not seem to be obstacles in the way

of a decision that all sales after 1866 were illegal and void as against the Government; that the title of the State was thereafter a shadowy title, inalienable and held in trust for the United States, and that the omission of the Government to assert its rights gave no right to the State or anyone else to do any thing with regard to the title. It is quite immaterial whether the precise situation of the title after 1866 has a complete analogy in the common law or not—an obvious proposition, which, however, seems to be somehow overlooked.

Such seems to be the meaning of the language used in the act of 1856, *forbidding* any further sales, and enacting that all unsold lands should then *revert* to the United States; and we see no reason why this law should not be interpreted and carried out like any other, as an expression of the lawmaker's will and exertion of his power to order and forbid, anything in any other law or thing to the contrary notwithstanding.

We think this court, in *United States v. Loughrey*, makes a very near approach to what we believe should be held, for it says:

To sustain this action there must be an *immediate* right of possession *when* the timber is cut. *This* might arise if the severance of the timber involved a breach of obligation on the part of the tenant [i. e., the State]; but if the timber were cut by a third person the question would be as to the right to the timber so cut as against the trespasser, and, unless the case of *Schulenberg v. Harriman* is to be overruled, it must be held to be that of the State.

Could such a breach of covenant possibly give the Government an immediate right of possession of cut

timber at the time of the breach, and a total forfeiture asserted by the proper organ of the Government—its Attorney-General—be regarded as giving no right at all at the time of the forfeiture incurred?

And in the Loughrey case it is said that if the State sues for and recovers the value of the timber cut, it may be accountable for the value to the United States, if a subsequent forfeiture act concerning the land is passed, notwithstanding such a subsequent act could not operate on the timber which had ceased to be the land by being severed and carried away. If so, shall we be told that we have no right to raise any question at all about what was done or attempted to be done to the lands themselves, because what happened before September, 1890, is no affair of ours—because before that the State had absolute power to deal with them as its own in every sense or respect, without our having any right to inquire or complain?

We do not think that this court is prepared to go quite as far as that, in disregard of what any common intelligence would understand by the act of 1856, and of the Government's rights thereunder.

10.

It would seem that this case is a very simple one.

The United States, for the purpose of an internal improvement of the United States, turned over to the government of the locality the title to lands along 36 miles of a proposed road, to be held subject to several conditions which were designed to secure promptness of construction, the faithful application of the lands to the

accomplishment of the improvement, their sale only as the work progressed (except as to 120 sections intended for preliminary preparations), and the return of all lands not sold at the end of ten years, unless, in the meantime, the road had been completed.

Not a single condition was complied with. The ten years expired and the road had not been completed; no lands had been sold; the 120 sections had not been used as intended or sold at all.

The law declared that after ten years, unless the road was *completed*, no further sales should be made and the lands unsold should revert to the United States.

Yet sales were made many years later, not only in defiance of this prohibition, but in disregard of the condition precedent that 20 continuous miles should first be built (as to all but the 120 sections).

That the United States, in fairness and right, became entitled to all the lands at the end of the ten years is not denied.

That it could have sued for and recovered every acre is not to be questioned. That no one could buy without knowledge of the law is undisputed. That the United States and its officials acted in all respects properly, misled no one, and relied, and had a right to rely, upon the holder of the legal title's acting in accordance with the law are manifest facts.

But upon inquiring into the matter it finds that the law has been utterly disregarded and defied and its confidence betrayed, not by the State, but by those employed by the State as its substitute to carry out the law under

a law of its own reaffirming that of the United States and ordering its faithful execution.

By the proper organ of the Government it claims its rights under the law. Had it done so in 1866 the courts would have declared, not that they would confer rights upon the United States, but that bringing suit was equivalent to entry and that the rights of the United States were complete when the ten years expired, except as to the right of immediate possession, which existed from the moment of entry by suit brought. In other words, the courts would have *decided* what *were* the rights of the Government upon the law and facts, and no question would have been permitted, after suit brought, that the lands being unsold belonged to the United States as soon as the ten years expired.

It seems to me this is consistent with the views of the majority and minority of the court in the Loughrey Case.

If such would have been the decision in 1866, it would have carried with it a denial of the validity of any sale between the date of forfeiture and reentry by suit, not only as forbidden by law, and therefore to be gotten rid of by relation, but as being a sale of what belonged to the United States.

It is true that some language is used in conflict with the declaration of the statute that there is a *reversion*, or shall be a *reverting* to the United States—that “the lands shall *then revert*”—and some language in conflict with that of the statute declaring, as supreme law, that “no further sales shall be made,” and “a mere possibility of reversion,” even after the event which put an end to all doubt

had occurred and the fact existed upon which the statute said there should be a reversion or reverting, is spoken of. But much of this is argumentative and, like the dictum in *Schulenberg v. Harriman*, so much quoted, unnecessary to the decision of the question before the court. The right to make further sales was not in question in either case.

With some exceptions, it is the business of the courts to declare and enforce existing rights. We must look elsewhere to find how, when, and where came the rights into being. If the United States, suing in 1866, had maintained its suit, we think it unquestionable that the law of 1856 and the reentry and the fact of failure to complete the road, and not anything the court was to do, created the rights of the Government; and that the words "shall *then* revert" would have been decided to determine when the reverting took place. It would never have been held that those words meant that a possibility of reversion then began, or that the Government was merely in the position of an assignee of a lessor under the statute of Henry VIII permitting him to assign his interest in the lease. The reversion of the title was absolute and complete. No deed of reconveyance was intended to be given, but the statute which gave the title gave also the reversion.

Of course, we recognize that the court is not likely to overrule the particular points necessarily decided in previous cases; but we do not see that it is necessary to do that in order to affirm that where the Government has entered after forfeiture incurred the land itself is to

be regarded as recoverable, free of all incumbrances subsequent to the forfeiture, and for that purpose, if not for all, is to be regarded as ours from the time of forfeiture.

This particular aspect of the matter does not seem to have been passed upon and is easily distinguishable from those which have been.

The neglect of the Attorney-General to sue in 1866 can not affect the Government's rights, and how such a neglect might operate in the case of an individual grantor need not be considered. Nor is there any question of the Government's waiving its rights. That it would have done so had the road been completed after 1866 is probable, but that is immaterial. Great and repeated efforts to get it to extend or renew the grant failed. It did so in other cases, thus recognizing that a new law was necessary for the purpose. If one is held not to be, then a principal aim of such laws, to compel speedy construction, is defeated by the courts. Moreover, there was a general law recognizing lands to belong to the Government "at the expiration of the grant" in all cases. (Act of April 21, 1876, section 3.) Section 4, act of March 2, 1889, is in *pari materia* and seems to have a similar meaning.

As we have said, everyone knew the law. Everyone undertaking to buy under it knew also that the road had not been completed. Such a fact is notorious in the vicinity of the road. There could be no purchase in ignorance of either the law or that fact, and the United States did nothing to estop themselves from asserting either.

There could be no purchase, for there was no power to sell. Everyone knew this also.

But if, in deference to dicta or decisions, the power to sell is held to have existed, it was a power to sell subject to the known conditions and limitations of the grant, and, therefore, to all the rights of the Government.

How it can possibly be law that the conditions and limitations could be gotten rid of entirely passes our comprehension. The proposition seems utterly unjust and unreasonable. We do not understand this court to have intended to decide in favor of it, even as a question of private deeds, much less as a question of statutory construction of such an act as that of 1856.

It seems to us, therefore, that all the lands should be declared to belong to the Government, with a title as free from claims and encumbrances as when granted.

But, if this is not so, then clearly all the lands forbidden to be sold, except after a condition *precedent* fulfilled should be so declared, the condition not having been fulfilled.

If not so, then all such lands not opposite completed road before 1890, supposing the act of that year to be a grant of those so opposite.

In none of the supposed cases can any valid purchase of the lands have taken place, nor can any *bona fide* or good-faith purchaser, no matter how defined, exist, by estoppel or otherwise.

If they can, however, yet lands the title to which remains in the grantee, including the forty odd thousand acres contracted to be sold (R., pp. 238, 237, 236, 6, 7, 8, 86, 69, 145), are not in the hands of such purchasers.

None of the lands sold to Carlisle by a questionable transaction concerning a barred debt and the like, which transaction was undone soon after, leaving the lands as before in the hands of the company, can be regarded as in the hands of a *bona fide* purchaser, even if nothing but constructive fraud in these dealings with lands held in trust has been successfully brought out by painful efforts against the combined concealments and manipulations and entanglements of the company and Carlisle, who seems to have been nine-tenths of the company. And it is inequitable to sanction the proposition that the company should deprive us of those lands with the aid of Carlisle, on the pretext of *bona fide* purchase. Carlisle and the company, of all others, best knew the rights of the Government, and even obtained the passage of the act of 1856 and made vain efforts to get the grant revived.

Not *bona fides*, but only an actual right and power to sell and to give a good, unconditional title, can give Carlisle or the company any pretense of a right to any of the lands. If there can be any holding merely by *bona fide* purchase, neither of them can rely upon that principle, if anyone can, which we confidently deny. His *quitclaim deed*, of course, does not make him a *bona fide* purchaser of the 17,000 acres. Nor does it seem that the acts of March, 1887, and March, 1896, can play any part as to this question of *bona fide* purchase, except (if at all) as to lands within the 120 sections in the indemnity limits, no others being patented or certified lands within the meaning of those acts, the information lists as to place lands being of no legal effect, merely for

information, and not requiring to be canceled by suit in any case and not "erroneous" issues of title.

The case, as we say, seems to be a very simple one. It has suited the purposes of those who, failing to get the grant extended, set their heads together to deprive the Government of its lands on some pretext or other, to complicate it, to obscure it, to twist and turn and confuse it, in hopes that the courts will not be able or have the patience to straighten it out and do justice between the parties. But this hope will fail, for this court must recognize the vast importance of a correct decision, seeing that so many similar grants have been made and "expired."

To affirm the theory that the act of 1890 was a grant of all lands opposite completed roads throughout the United States, regardless of all causes of forfeiture, would alone involve an enormous loss to the public, and to affirm the other theory as to lands unsold within the time limited in the grant would be equally disastrous to the trust fund of public lands held for the common benefit.

Moreover, the interests of thousands of settlers and other individuals in many regions depend upon the decision of this case; interests for the most part, and certainly in this case itself, identical with those of the United States; in many instances the interests of settlers being in conflict with those of pretended purchasers. (See secs. 2 and 3, forfeiture act of 1890.)

11.

As we have asked for an accounting and none of the objections raised in *U. S. v. Winona & St. Peter* exist, the court will find no difficulty in requiring the value of the lands held by any *bona fide* purchaser to be paid to the Government.

If this question of *bona fide* purchase is held against us and in any way this question of value of the lands is to be settled, it is submitted that we are entitled to it aside from the acts of 1887 and 1896 and are restricted to the minimum price only in the case of suits under them. The minimum price is \$2.50 per acre.

12.

A statute which has more than one important bearing on this case seems to have been overlooked by the courts, although referred to in Land Office papers concerning certifications of lands for other than the Tennessee and Coosa Company—that is, the *post bellum* certifications mentioned in the Record (pp. 14, 15, 28, 31, etc.).

It is the act of April 10, 1869, and declares that “so much of the *grant of lands* made to the State” by the act of 1856 “as were granted to assist in the building of railroads from near Gadsden to” [describing two roads other than the Tennessee and Coosa] “*is hereby revived* and renewed, subject to all the conditions and restrictions contained in the act referred to, and subject to the further limitation that if either of the said railroads is not completed within three years from the passage of this act no

further sale shall be made for the benefit of such railroad: *Provided*, that the lands granted by the act hereby revived, except mineral lands, shall be sold to actual settlers *only* in quantities *not greater than one quarter section to any one purchaser*, and for a price not exceeding two dollars and fifty cents per acre."

It seems to me this is a legislative declaration that Congress insisted upon the forfeiture incurred under the act of 1856, as it *revived* and *renewed* part of the grant, recognizing it as dead, and refused to do so as to the rest. But if that be not the implied meaning of this act, what possible basis can there be for the argument that the act of 1890 has the implied meaning (*adverse to the public rights*) asserted by the lower court?

However, suppose this is erroneous and the Tennessee and Coosa lands still subject to sale after 1866, as claimed, here is a law of 1869 saying that "*the lands granted by the act hereby revived*" (act of 1856) shall be sold to actual settlers *only*, and even to them but one quarter section apiece.

What becomes of the two deeds to Carlisle, in view of this law?

A similar law as to a third road was passed March 3, 1871, the same language throughout being used (16 Stat., 580).

These laws and the act of April 10, 1869, do not seem to have been mentioned below.

13.

That a grant of public property or rights must be unambiguous, and that the act of 1890 is therefore not

an absurd and improvident grant of all previously forfeited place and selected *indemnity* lands (selected for all parts of the roads) opposite constructed roads. See

Rice v. Railroad Co., 1 Black, 359.

Slidell v. Grandjean, 111 U. S., 412.

Charles River Bridge v. Warren Bridge, 11 Peters, 421.

Litchfield v. Webster Co., 101 U. S., 775.

That mere contract to buy, the price not having been paid, does not make a *bona fide* purchaser. See

Lytle v. Lansing, 147 U. S., 70.

Dresser v. Missouri Co., 93 U. S., 92.

Jennison v. Leonard, 21 Wall., 309.

Williams v. United States, 138, 516.

That neither does a quitclaim deed. See

Wood v. Holly Mfg. Co., 13 South. Rep., 948.

O'Neill v. Seixas, 85 Ala., 80.

That, contrary to the view of the *trial* court, the Attorney-General may make entry for the Government after the forfeiture. See

United States v. Throckmorton, 98 U. S., 70.

United States v. Tin Co., 125 U. S., 178.

United States v. Beebe, 121 U. S., 338.

United States v. M. & C. R. Co., 141 U. S., 382.

Van Wyck v. Knerals, 106 U. S., 360.

Schlesinger v. Kansas City, 152 U. S., 453.

Act of Congress creating office of Attorney-General.

That no mortgage or pledge of lands could make a man a statutory, *bona fide* purchaser. See act of March 31, 1887, section 4, and act of May 2, 1896, being acts *in pari materia*.

The settlement with Carlisle in 1887 by means of our property held in trust, which arrangement was undone and a different settlement made for paying him off in 1888, would, if used and allowed to deprive us of our property on the pretext that this created a *bona fide* purchase, probably be equivalent to a constructive fraud, irrespective of any intent. See

Dwight v. Blackman, 2 Mich., 330.

Stephen v. Beall, 22 Wall., 329.

Smith v. Frost, 70 N. Y., 65.

Brown v. Cowell, 116 Mass., 461.

2 Pomeroy Eq. Jur., 956.

Also Rec., p. 230, etc.

In view of what *thus* appears, to say nothing of our affirmative evidence as to the resolution quoted on R., p. 231, the burden of showing a *bona fide* purchase is not sustained by Carlisle.

We think the act of April 10, 1869, was a sufficient entry by Congress for the forfeiture to be regarded as consummated, if not already so.

We think sec. 3 of the act of April 21, 1876, was the same. Congress thereby proceeded to dispose of the lands as its own.

We think both acts together were certainly sufficient.
Respectfully submitted.

CHARLES W. RUSSELL,
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J. K. RICHARDS,
Solicitor-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

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| THE UNITED STATES | } No. 53. |
| <i>v.</i> | |
| THE TENNESSEE AND COOSA RAILROAD Company, Hugh Carlisle, et al. | |

REPLY BRIEF OF APPELLANT.

The brief of the other side, which is quite ingenious and careful, shows—

1. What fallacious deductions from dicta of this court have been misleading the lower courts.

2. That the whole strength of the other side lies in treating as equivalent in authority to statutes some casual remarks of this court in cases between third parties who could not collaterally assert the rights of the Government while the Attorney-General and Congress remained inactive.

3. That although these remarks are obviously dicta, the industrious attorney has—

(a) Failed to show by reason or authority that they were correct remarks, read as he reads them.

(b) That he admits that they can not as so read be reconciled with the authorities as they certainly can not with the obvious intent of the act of 1856.

These dicta are on pages 12, 13, 14, 17, and 21 of the brief, and are all directly or indirectly from the two cases of *Schulenberg v. Harriman* and *Land Co. v. Courtright*, both in 20 Wall. In that volume and on those pages the court is requested to examine them in connection with this reply.

The rights of the Government being declared by the statute of 1856 so that no purchaser could be ignorant of them, and the condition precedent as to all but the first 120 sections being obvious, the appellee's attorney realizes that what he must prove to save the other lands is not *bona fide* purchase, but *a power to sell freely and indefeasibly to any one after the expiration of the ten years*, although the road had not been finished, and that the lands were accordingly sold before September, 1890.

Such a proposition would never have been ventured by any lawyer but for remarks of this court in *Schulenberg v. Harriman*, a case turning upon no question about sales or power to sell, and in *Land Co. v. Courtright*, a case involving only sales *within* the ten years of lands in the first 120 sections.

Take out of the brief these dicta as read by the attorney and he practically admits all that we claim. Deprive the brief all pure and simple dicta and nothing remains.

For example, it is admitted that we have abundant authority for the proposition that a condition of defeasance accompanying an estate goes with the estate into whosoever hands it may pass (unless those of a *bona*

fide purchaser without notice of the condition). The brief merely quotes a remark in the *Schulenberg Case* and says that, owing to the conflict between the remark and all the authorities, the authorities are "inapplicable" (p. 15).

It would seem that the attorney, if the dicta as he reads them were good law, would have been able to find some confirmation of them in some cases or, at least, give reasons in support of them. But he can not do either.

Should he attempt it either the dicta or his construction of them would quickly give way. He discreetly avoids the attempt. In *United States v. Wong Kim Ark* (169 U. S., 679), this court, in an elaborate opinion, decided that children born of foreigners domiciled in this country became by the fourteenth amendment to the Constitution, citizens. In 16 Wall, 73, the court had said: "The phrase 'subject to its jurisdiction' was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign States, born within the United States."

In disapproving this proposition the court, in *Wong Kim Ark*, quoted a wise and important observation of its own, made through Chief Justice Marshall:

It is a maxim not to be disregarded that general expressions in every opinion are to be taken in connection with the *case* in which those expressions are used. If they go beyond the case they may be respected, but *ought not to control the judgment* in a subsequent suit when *the very point* is presented for decision. The reason of this maxim is obvious: The *question* actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it are con-

sidered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.

If the court will ponder this observation and fully realize its pertinency to the arguments in this case, it will see the injustice to itself of quoting as its combined wisdom, fully weighed and agreed upon, sentences in an opinion necessarily written by only one of its members and having no direct bearing upon the judgment it was rendering concerning a distinctly presented, distinctly argued, and distinctly discussed and adjudged point, issue, or question.

That issue was, could the State by statute protect the land from timber trespass after the ten years had expired? No question of the right of the State to dispose of it, subject or not subject to rights of the United States, was at issue, nor any question about the effect of the United States claiming their rights. So far as third parties who were trespassers were concerned, they could not take advantage of any rights of the United States. That was "the very point" of the *Schulenberg* controversy.

There was no reason why the State could not protect the lands in the same way if they belonged to the United States and had never been granted.

But the brief of the other side not only ignores the maxim quoted; it ignores another proposition equally simple and important to remember, namely:

Even when the *thoughts* of the court or of the single writer of the opinion are correct, language is often used which can not be extracted from the context and considered in disregard to the question litigated without giving a wrong impression as to what those thoughts really are.

This is notably the case with the large capital quotation on page 21 of the brief, from an opinion by the lamented and able Justice Field in the Courtright Case.

In writing that, Justice Field assumed that the statute and question he was discussing would be kept in mind, and also the context. What he means to say, and what his words, properly considered, sufficiently do say, is simply this, that the statute attached a condition to the *alienation* of all lands not in the first 120 sections and no condition to the alienation of the rest. This is his meaning. A fee simple estate was given the State as to all the lands, with a provision for defeasance attached to all the lands. All were accompanied by a power of alienation and to all a good *indefeasible* title could be given to the purchaser. But the 120 sections had no condition attached to this *power of alienation*; they could be sold *immediately*, and the condition to sell them from time to time, only as the work progressed and only after 20 miles had been built and certificate made of the fact—these being the conditions attached to the power of fully and indefeasibly alienating the *others*—were wholly lacking. The State was trusted to apply the lands properly; it was not required to *build and certify first* and then sell. But the justice did not understand that he was saying anything more than, or different from, what the statute said. He was talking about the terms and meaning of the statute. He did not understand that he was saying more than that there was no condition to be fulfilled “in the *disposition* of this quantity” with a perfect title to it. The defeasance provision as to the lands was not a condition attached to the alienation of title of *any* of them. It had no more to do with the power of

alienating one part of them than the other. *Either* kind could be sold indefeasibly within ten years, the one kind upon the performance of certain conditions, the other without performing any, and *neither* kind after ten years, the road being uncompleted.

Justice Field himself, in the same and also in another case, shows what he meant to say and all he meant to say. In *Farnsworth v. Minnesota and Pacific Railroad Company* (92 U. S., 65), he says:

The act of Congress granting lands to the Territory of Minnesota imposed conditions *upon their alienation*, except as to the first 120 sections, which the Territory could not disregard. * * * The evident intention of Congress was to *secure* the proceeds of the lands for the work designed, and to prevent any alienation in advance of the construction of the road, with the exception of the first 120 sections. The act made the construction of portions of the road a condition precedent to a conveyance of any *other* parcel by the State. No conveyance in disregard of this condition would pass any title to the company. It was so held by this court in *Schulenberg v. Harriman*, etc.

Even, therefore, if his language had the force of the statute of 1856 and could amend it or set it aside, it has been misunderstood. He did not mean to say by the language quoted that at the end of ten years *further* sales of these lands *could* be made and that the unsold lands or any of them should *not* revert to the United States, if the road had not been completed in the meantime.

His language may go too far if Justice Field meant,

by his broadly worded phrases, to say that the first 120 sections could be sold otherwise than "only as the work progresses," including, perhaps, "preliminary work," such as surveying, etc. The clear intent seems to be that the first 120 sections were to complete the first 20 miles and the next 120 the next section. Preliminary work was a small matter that Congress does not seem to us to have provided for. It was merely "aiding" the State to build.

The question before him in this Courtright Case was, could a sale of 120 section lands be made in 1857 with good title, although no section had been built and no condition complied with, and he answered that it could, because as to these 120 sections no building of road or the like was a condition of alienating, as it was a condition of alienating with like title, the other lands.

That was "*the very point*" decided in this Courtright Case.

Of course, if the road was to be finished within ten years, *a fortiori* 20 miles of it were to be built within ten years, and *a fortiori* preliminary work was to be done within ten years. Congress did not think it necessary to say expressly that what had to be finished within a given time had to be begun within it—that the 120 sections whose proceeds were to build the first 20 miles and furnish preliminary work were to be sold within the ten years and so early that it would be practicable to finish the road within the ten years, since they could be sold only to accomplish that. This was necessarily and emphatically implied, and the Courtright opinion means

nothing to the contrary, for the sales approved in it took place in 1857, and therefore sales after ten years were not under consideration.

The most serious error of the brief on the other side, however, is in regard to the Schulenberg quotation (p. 13). The learned counsel says (p. 15), that the power *to give a perfect title* was just as good after "as before the breach."

But what is the dictum of the court? "A cessation of sales in that event is implied in the condition that the land shall then revert; *if* the condition be not enforced the power to sell continues as before the breach, limited only by the objects of the grant and the manner of sale prescribed in the act."

"Continues as before the breach" would seem to mean simply "sales can still be made," and not "remains the same kind of a power and has the same effect in all respects." Or rather, in such a mere dictum, the justice probably had no very definite meaning beyond a denial that all power to sell was at an end so far as collateral proceedings of third parties were concerned.

When we consider that the justice is not ignoring, but discussing, the very condition itself and in its relations to a case between third parties, the meaning of this language can not well be mistaken for an affirmance that there is no such condition at all, or that it is to have no effect whatever in any circumstances. "If" it be not enforced by the grantor, who alone can raise any question about it, the power of sale continues, because the rights are the grantor's and these third parties have no power to enforce the stopping or rely on it in any way

whatever; but the power of sale continues, *even as to them*, only when the sales are limited to the objects of the grant and the manner of sale prescribed in the act, any other sale being altogether *void*, instead of void as against the grantor, and to be collaterally attacked. The justice is speaking not directly of the condition that the road shall be constructed, but the provision or "*condition that the land shall then revert*," which, he says, implies also "*a cessation of sales*."

A greater misreading of a dictum could not well be made than to say that this means that "if" the condition is enforced by the grantor—the "condition" that sales shall then cease and the lands then revert—all sales shall be regarded, nevertheless, as giving a perfect title as against him. The learned justice's dictum was better understood by the supreme court of Alabama. (*Swann & Billups v. Miller*, 82 Ala., 538, 539.) It says: "The mode and time of sale prescribed in the act must have been complied with in every essential particular * * * It can scarcely be contended that a sale made in contravention of the letter and policy of the law is merely voidable. It can not be other than void *ab initio*." *Schulenberg v. Harriman* is twice cited in support of that proposition; and in *Mathis v. Tennessee & Coosa* (83 Ala., 415), after saying that the first 120 sections could be sold "without first taking any steps toward the construction of the road" and calling *this* an "absolute, unconditional right of sale," the court says: "We judicially know that the Government of the United States has taken no action declaring a forfeiture of the lands it had granted," *Schulenberg v. Harriman* being again cited.

This is the probable meaning of the dictum, that "if" the United States does not make the point that the sales shall then cease, *no one else* can question a sale after the ten years, unless that sale is *void ab initio*, because not confined to the objects of the grant and the manner of sale prescribed in the act. Those objects and that manner of sale limited the selling power so that any sale at any time or under any circumstances outside of those limits was absolutely void for all purposes and *as to all persons*. It was *ultra vires*. (*Morton v. Nebraska*, 21 Wall., 660; *Newhall v. Sanger*, 92 U. S., 761; *Wright v. Roscherry*, 121 U. S., 488; *Burfeening v. Chicago*, 163 U. S., 321.) Whereas, the cessation of sales made in conformity with the law was, so this dictum means, a matter with which third parties had nothing to do. It was unimportant *if* the grantor did not enforce it, since it was no one else's business should the sales continue.

The dictum does not undertake to say what would happen if the grantor were present in the controversy asserting his rights, except by intimating that the situation would be altogether different.

We think the dictum might have said that a sale after the ten years was thus *ultra vires*, and that it is contrary to familiar principles to say that the prohibition to make one "added nothing" to the force of the provision that the lands should then revert. That makes a positive and independent provision of law mere surplusage. Congress was not satisfied with the "implication" from the "reverting" and positively forbade further sales. This is further law and must be given a *further* effect,

not treated as identical with the provision as to reverting and thereby rendered vain surplusage. Congress had in mind first and expressed a prohibition to sell after ten years. The question then remained, what shall happen to the lands, and Congress decided that those not sold, and only those, should revert, and so expressed itself. This was the plan and these the thoughts of Congress, and we can not say that Congress meant anything less than or different from that plan and those thoughts so plainly expressed. The provision as to what should happen to the unsold lands did add something to the prohibition of further sales, and by treating this prohibition as a positive order all the language of Congress becomes effectual. That, *therefore*, is the proper construction. Any sales after ten years were thus prohibited by law and therefore null and void as to all the world.

Counsel makes the mistake of confounding two powers to sell—that expressly given by the act and expressly limited to ten years, and that arising merely from having title (always supposed to be alienable) after breach of a condition subsequent. The former gave a right to sell an indefeasible title; the latter the power to sell as in other cases of *having title* after breach—that is, subject to the grantor's right to take advantage of the breach—a right which would be meaningless if a perfect title could be given. Of course the supposed alienability of title ignores the express restraint upon selling in the act of 1856, but that seems to have been construed as surplusage.

But in this case the grantor *has* enforced and *is* enforcing the "condition" that sales shall "in that event" cease. It is unnecessary to discuss separately the quotations from

Secretaries Lamar and Noble. They proceed (rightly or wrongly) on the supposition that no forfeiture having been declared, the Secretary must act accordingly, except the last, which only discusses *bona fide* purchasers. It is still the "if" and decisions made as in *collateral* proceedings, not the question of the effect of a direct judicial or Congressional attack by the grantor. The Secretary was advised in 1878 by the Attorney-General that it was not for the Secretary to enforce the forfeiture and that he could proceed as a third person would and issue patents. Executive officers, and even the lower courts, do not always inquire whether the language of this high court is a dictum or a decision. Whatever it says is assumed to be good law, regardless of "the very point" decided and often of the context also.

The reason usually given for the inability of third persons to make any use of the rights of the grantor, even with his help, is that the law wishes to prevent a transfer of his rights to avoid maintenance. Another reason seems to be that the statute of *quia emptores* reduces the right of every grantor (not being the *chief lord*) to a mere chose in action, and this, of course, was not assignable. Here we have a question as to the chief lord and his rights.

If anything could be a greater misuse of a dictum than the one last discussed, we find it on page 13 of the brief of the other side, where "the time of resumption" is capitalized. The report and the opinion regard a statute of Iowa as reserving a competency to resume the grant, if the road was not built in a certain time. By the terms of the Iowa act the right to the lands was restricted, so

the court says, to such lands as at the time of resumption had not been previously disposed of. The language was, "Then and in that case it shall be competent for the State of Iowa to resume all rights conferred by this act upon the company so failing, and to resume all rights to the lands hereby granted and remaining undisposed of by the company so failing to have the length of road completed in the manner and time as aforesaid."

What has the construction of this language of this Iowa act to do with our case? Even in the case in which it was employed, the question was not at all whether the time of resumption or the time allowed to complete was to be regarded, but whether the sale was one "dependent upon conditions to be *previously* performed" or was proper because no way affected by *previous* conditions. Our statute says nothing about the competency of the Government to pass a law resuming all the rights given to a company, but that the lands granted shall, at the end of ten years, no longer be sold, but "then revert" to the grantor.

As to the dictum from the circuit court's opinion in *United States v. Willamette Valley Wagon Co.* (55 Fed. Rep., 807), a suit which it required a special act of Congress to induce the Attorney-General to bring, after certificates of the governor, after an act of June 18, 1874, authorizing the issue of patents upon such certificates, after the actual investigation of the road and issue of the patents, the case was expressly decided upon the ground of estoppel, and the dictum, when traced back through the same case in 54 F. R. to same case in 42 F. R., appears to be an application of the dictum in *Schulenberg v.*

Harriman. If that is what *Schulenberg v. Harriman* means, so be it; but if not, then this dictum rises no higher than its source—a mistaken supposition that that is what it does mean. Besides, this saying, capitalized on appellee's brief, page 14, may mean no more than that no forfeiture *would be* enforced in the case supposed, not that legally it could not be.

This court is not likely to be governed by law filtered through what lower courts understand by dicta of its own. If it has ever decided any such proposition, it will consider its own decision at first hand and repeat or overrule it, according to its ultimate belief as to the meaning of the supreme law of the land.

Certainly, if the act of 1856 grants a title on a condition subsequent, that condition subsequent is that the grant shall become void *at the end of ten years*, and not at such time as the Government may see fit to enforce the breach or interfere. It was not to be valid *until* such interference; but *notwithstanding it was void*, third parties could not in collateral proceedings take any advantage of the fact. This is the *Schulenberg* dictum.

Not that we think it important here whether, if the road had been completed in 1867 or thereabouts, as to which the principle *de minimis* or the principle of "substantial performance" might apply, or even completed in 1877, or even 1887, or even before the act of September 29, 1890, and we had the certificate of the governor, which was made the exclusive evidence of proper construction that it was so completed, and if there were nothing in this case but the naked question of a failure to

complete in time, the courts would be bound to interfere on that sole ground.

Neglect and delay continued for many years, and until Congress passed the act of 1890. Prior to that time nothing worth mentioning had been done, and the company could not say, Behold the completed road—behold the certificate of the governor that all is well done and finished, from terminus to terminus; we were simply a few months or a few years late.

But we say that this court has *not* said that a long delay, a substantial delay, in constructing the road would not be a substantial breach of the condition subsequent warranting a recovery, and any dicta of lower courts (if there be any) are mere hasty inferences from that other dictum in *Schulenberg v. Harriman*.

The *reductio ad absurdum* of the dictum in the Schulenberg Case and the dictum in the Courtright Case, as construed by counsel on the other side, is reached by combining them, and from the combination reasoning to the seemingly logical conclusion that the act of 1856 means quite the opposite of what it says. In this process, counsel omits the "if" of the Schulenberg dictum, preferring the word "until." What he means by "this estate" is not clear, but apparently he means "this grant" continues. Unfortunately, the grant as distinguished from the estate, carried on its face a ten years' limit to the granted "unqualified right to dispose of the land;" and the "estate," as distinguished from the grant, could not draw from the common law referred to in the Schulenberg dictum any but a *qualified* right to dispose of the land.

Parts of the brief of counsel on the other side, notwithstanding its conceded ingenuity, are an exhibition of casuistry running into extravagance. On page after page we find propositions which will be to this learned court so manifestly erroneous that we shall not waste words on them. For example, pages 11, 19, 20, 21, 22, 23, 24, 27, and 28. As for the dictum from *St. L., I. M. and Sou. Ry. Co. v. McGee* (115 U. S., 459), I shall only refer to what the court says in *Farnsworth v. Minn. and Pac. R. R. Co.* (92 U. S., 68, p. 24), and remark upon the inconsistency of solicitously protecting the public rights in construing grants and doing the opposite in connection with public rights growing out of their forfeiture. The Beebe Case referred to expressly proceeds on the supposition that the individual *could have sued* and did not, and so he was guilty of laches. Laches can not exist without opportunity, and, moreover, these persons "bought" shortly before our bill was filed. The omission to aver suggested on pages 27 and 28 of the brief may point out a defect in the *answer*. It is not a defect in the bill. The argument at the top of page 20 is fallacious. The Government was not granting lands so much to get part of a road and so much to get a whole road. It wanted a whole road and nothing else. *Sioux City R. R. v. U. S.* (159 U. S., 249). The sales were therefore to stop when the ten years expired, whether the right to sell had attached or not, if the road was unfinished. The only reason all lands were not to revert was to save the rights of legitimate purchasers under the power to sell, and not to donate anything for a fragment of road built. See acts of Congress Aug. 8, 1846 (9

Stat., 83), Aug. 26, 1852 (10 Stat., 30), Sept. 20, 1850 (9 Stat., 466), and numerous similar acts.

But on pages 25 and 26 we find an erroneous argument which needs answer, because not unlikely to mislead unless very carefully examined by the court.

Briefly stated, the argument is that lands in the quitclaim deed, *some* of which were opposite completed road when the act of 1890 passed, were not forfeited by the act of 1890, not confirmed by it, nor in any way affected by it. Before our bill filed, so it is argued, the whole road was constructed, and *then*, not before, the company "earned" the lands; *then* the title of the company became good and complete as to the lands along the ten miles completed before the act of 1890. These are, be it observed, lands outside the first 120 sections.

This is very ingenious, but utterly unsound, even as a question of general principles of "law, justice, and equity."

It assumes what we deny—that time was not of the essence and not of the terms of the granting arrangement of 1856; that our mails and our troops could be kept waiting a whole generation for the road to transport them, and that if the road was completed at any time we lost our right to enforce the forfeiture.

It ignores the object of the grant, to aid the creation of a road. That grant was not a free gift to the State *because* a railroad was built in the State, no matter when, how, or by whom built or owned or whether subject to the burdens of the act of 1856 or not.

The company whose vendee is claiming the title did not complete the road, nor did any company for and on its behalf, nor did any company of the State or for and on behalf of the State complete it. Neither were any of the lands applied to its completion, or the proceeds of sales of them. Nor would anything be gained by the company that did build, or by the State, in consequence of your deciding in favor of the appellees.

The fact is, the general forfeiture act left all rights of way unforfeited, and the Tennessee and Coosa Company sold its right of way to a foreign corporation wishing to make use of it for its own purposes. This corporation may have laid tracks and run trains of its large system across the line, and possibly did so, before our bill filed. We doubt the fact, but regard as irrelevant everything said on the subject. The evidence referred to consists in an answer on cross-examination of a farmer, in 1895, as to whether trains were operated from Gadsden to Guntersville "before the filing of this bill." He says, doubtfully: "My recollection is that they were." It does not appear that he knew when the trains began to run or on what date the bill was filed. And see agreement of counsel on Record, page 137.

But that foreign company had nothing to do with the State of Alabama, or with the act of 1856, or with the land grant; it claims no interest except in the purchased right of way, and would quickly repudiate the obligation to carry the United States mails as provided in the act of 1856, section 5, or troops as provided in section 3.

Again, there is not the evidence required by the act of 1856 that the whole road or any 20-mile section of the road has been properly constructed; nor would the governor, under the circumstances, have misled the United States as to the land grant by giving any such certificate.

Without that certificate there is certainly no "law" for saying that any part of the road has been constructed, so far as any earning of lands under section 4 of the act of 1856 is concerned.

There is neither equity, justice, nor law for this specious contention.

But, further, the act of 1856 says nothing about "earning lands" by constructing the road. What it says is that it hereby grants to the State to be subject to the disposal of its legislature for a purpose and no other, and that the lands are to be disposed of *only* in the manner following:

And *when* the governor of said State shall certify to the Secretary of the Interior that any 20 continuous miles of any of said roads is completed, *then* another quantity * * * may be sold; and so from time to time, until said roads are completed, and if any of said roads is not completed within ten years, no further sale, etc.

In *Furnessworth v. Minnesota and Pacific Railroad Company* (92 U. S., 49) this court held that an act such as was passed by Alabama in 1857 "conveyed, therefore, no title" to the railroad company "beyond the 120 sections." The act of Congress "made the construction of the road a condition precedent to a conveyance of any

other parcel by the State. No conveyance in disregard of this condition could pass any title to the company."

So that this court has held, as to an identical grant, that the title to lands such as these given to the State in 1856 remained in the State and could never be transferred until the condition precedent was complied with. A title never begins or has any kind of existence before the condition precedent to the existence of a power to give it happens.

So the title never went to the Tennessee and Coosa Company, but remained in the State, without power to part with it until it made a certain certificate, which it did not make before our bill was filed, and, for that matter, has never made and could not decently make.

But the State having gone through the form of transferring it and not intending to make any use of it, now that a road has been completed on the same line by another company there is nothing to prevent a decree in our favor as to these lands opposite completed road. (*Sioux City R. R. v. U. S.*, 159 U. S., 249.)

As for the quotation from *Bybee v. Oregon and California Railroad Company*, we see no comfort in that to the other side.

It was, like nearly every case cited, between third parties.

The act under consideration provided that upon failure to complete the road in time the granting "*act shall be null and void*" and the lands not then patented to the company revert. This is what the court was discussing—whether *ipso facto*, as to third parties, the grant was null and void as to *all* lands, or the case merely one like

Schulenberg v. Harriman, and the act null as to *some* lands. It will be observed that Congress itself liberally provided that all the lands should not be forfeited for "failure to complete the last mile." It did not leave the courts to consider that possibility, but made its own provision about it, which the courts must content themselves with interpreting and applying and can not improve upon. The brief omits a very important part of what the court says, namely: "*As to lands theretofore* (i. e., before the time allowed for building expired) *unpatented* the act continued in full force and effect. As remarked by the learned court below: "It is to become 'null,' " etc.

This case of ours, as said in our first brief, is a very simple one. And, as two lower courts have decided against us, the very simplicity of it is embarrassing. We have an embarrassment of riches, as the French say.

If *some* of the lands had been sold within ten years in order to complete the road within ten years;

If *some* of the lands outside the 120 sections had been sold after 20 miles of road built and certified;

If Carlisle, instead of owning a majority of the stock from 1860 or thereabouts, and so controlling or being the company, had been an outsider;

If there had been a single error in certifying by the Department of the Interior;

If there had been a single act of the Government tending to estop it;

If the Government stood like an individual in regard to laches;

If, even between individuals, silence and inaction were

a waiver of breach, instead of the law being well settled to the contrary ;

If a purchaser does not take, *subject to the trust*, lands sold by the holder of a legal title held in trust to be conveyed to the equitable owner (*Carroll v. Safford*, 3 How., 441);

If, though late, the company had diligently and faithfully proceeded to sell lands, raise money, and complete the road ;

If the first 5 miles had been built by the company, and not another company and all the rest, but five miles, by a third company ;

If Carlisle could have shown *some* ignorance of the law or facts affecting his purchases ;

If his quitclaim deed had not been for lands many of which are not opposite constructed road ;

If it had been a warranty deed ;

If the whole road had been finished in 1867 or thereabouts so as to present a "substantial compliance" with the condition ;

If the provision as to further sales in the act of 1856 had not been as simple as it was, to laymen and to lawyers ;

If the rights of the Government had been in such a position that *any* purchaser *could be* a purchaser without notice ;

If the testimony of Carlisle and his friends had been straightforward and frank, instead of the opposite ;

If the lands unpaid for had really been "part of the land conveyed to Carlisle" (Appellee's brief, p. 9) ;

If the eleven bonds had been deposited in 1860 (ditto,

p. 6), instead of at some vague time "after the war" (Rec., p. 147);

If his debt thus secured after the war could have been restrainable or reducible by any known method to credible proportions;

If he had, as he thought, lost the *only* minute book;

If, adopting the other side's theory of the act of 1856, sales to other than settlers had not been expressly forbidden by the act of April 10, 1869;

In short, if there had been a single thing unfavorable to the Government's claims or diminishing its equity as to *any* part of the business or *any* of the lands, we should find it easier to argue the case.

But there is really nothing to argue. There are no two sides to the question. There seems to be nothing doubtful about either the facts or the law on which to base a decision in our favor.

And yet the case comes here with an affirmed decision the other way, based upon a mere misread dictum in the *Schulenberg* case and a manifestly erroneous denial of the Attorney-General's power to enforce forfeitures by suit.

Even the attorney for the other side practically admits the error of this last proposition on pages 25 and 26 of his brief, although, naturally enough, he does not expressly discredit an opinion in his favor (p. 27).

That the *Schulenberg* dictum about the power to sell did, contrary to the maxim of Chief Justice Marshall, "control the judgment in a subsequent suit when the very point is presented for decision" is clear from a reading of the circuit court's opinion, and that it was

a pure dictum about a point not presented for decision is equally obvious.

Of course, the dictum, properly read, is quite consistent with our success, in view of the "if" in it. And all this time there was evidence—had it only been industriously presented—that Congress meant by the act of 1856 to make the lands return by force of the statute alone. It was a very natural meaning, because the Government could not conveniently make entry in the manner of a private individual—and this was as well known then as it is now. It was convenient to have the statute say that the lands should, without such impossible entry, return to the United States. It was natural, too, for Congress to have foresight enough to make an adequate provision, if it was going to make any, as to what should happen to the lands in the event of failure to build. In *Sir Moil Finch's case*, *decided in 33 Elizabeth*, Godfrey, arguing, says: "At this day, where a forfeiture is given to the King, etc., by statute, the words are, 'that the King shall be seized without office.'"

The title to the lands was intrusted to the State for a sole purpose and a fixed time, and there is no conceivable reason why Congress should not have intended the title to them to come back, return, revert, when no longer applicable to that purpose and the time had expired. When the time expired the grant expired and Congress itself so understood.

The evidence of such an intent is found in similar laws expressing the same ideas in other language. For example, the act of September 20, 1850, almost identical in general plan throughout with the act of 1856, makes

grants to Illinois, Mississippi, and *Alabama* for a road from Mobile to Chicago, and section 5 says:

And be it further enacted, That if the said railroad shall not be completed within ten years, the said State of Illinois shall be bound to pay to the United States the amount which may be received upon the sale of any part of said lands by said State, the title to the purchasers under the State remaining valid; and the title to the residue of said lands shall reinvest in the United States, to have and to hold the same in the same manner as if this act had not been passed.

In an act of March 3, 1845, granting lands to Indiana for a canal, we find in section 4:

And shall be completed within fifteen years from and after the passing of this act, or the State shall be holden to pay to the United States the amount of the price or prices for which any and all land which may have been disposed of by said State may have sold; and such of said lands as may not have been thus disposed of shall, from and after said fifteen years, if said canal shall not then have been completed, revert to *and again become the property of* the United States.

Within two years after the passage of the act of 1850 above quoted, language identical with that of section 4 of our act of 1856 occurs in the act of June 10, 1852, granting lands to Missouri; also in an act of February 9, 1853, granting lands to Missouri. Doubtless, the same men were in Congress to draw and pass these laws.

Act of August 8, 1846, granted lands to Wisconsin, the lands to "be and become the property of said State for the purpose contemplated in this act, and no other,"

prescribing how the lands shall be sold, and, without any provision about getting back title, requiring the State to pay the United States whatever the State may have received "for any of said lands," if the river improvement should not be commenced within three and finished within twenty years.

The Union Pacific act of July 2, 1864, sec. 17, providing for a branch to Sioux City, says: "Provided, however, That if the said company so designated by the President shall not complete the said branch from Sioux City to the Pacific Railroad within ten years from the passage of this act, then, and in that case, all of the railroad which shall have been constructed by said company shall be forfeited to, and *become the property of*, the United States."

And the original Union Pacific act of 1862, sec. 17, provided that "if said roads are not completed so as to form a continuous line of railroad, ready for use, from * * * to * * * by the first day of July, 1876, the whole of all of said railroads * * * together with all their furniture, fixtures, rolling stock, machine shops, lands, tenements and hereditaments, and property of every kind and character, shall be forfeited to and *taken possession of by* the United States."

To these proofs of an intention to provide a substitute for entry in person or inquest of office might be added the contemporary construction by the Interior Department, and the act of April 21, 1876, section 3, referring to that, which act has been held *not* operating to divest vested rights of grantees (13 Fed. Rep., 105):

SEC. 3. That all such preemption and homestead entries which may have been made by permission of the Land Department, or in pursuance of the rules and instructions thereof, within the limits of any land grant at a time subsequent to expiration of such grant, shall be deemed valid, and a compliance with the laws and making of the proof required shall entitle the holder of such claim to a patent therefor.

Congress not only asserts ownership and disposes of the lands, but asserts it and disposes of them on the theory that the Land Department had rightly treated them as lands of the Government from "the expiration of the grant."

Then there are a number of laws extending the time fixed in the acts of 1856, which fact indicates that Congress understood that an extension was necessary. The other side seem to think not. In Indian treaties the word "revert" seems to be used as we understand it, e. g., Choctaw and Chickasaw treaty of 1855: "Provided, however, no part thereof shall ever be sold without the consent of both tribes, and that said land shall *revert to the United States* if said Indians and their heirs become extinct or abandon the same." And this is spoken of as a "*reversion* provided for." (Creek and Seminole treaty of 1856.) And in providing for patents under grants like ours Congress takes pains to say that "this shall not be construed to revive any land grant already *expired*." (Act of June 18, 1874.)

Of course, reducing the Government, the chief lord, to a mere right of reentry for conditions broken and saying that there should be an inquest of office to establish the fact that the road was not completed are two

essentially different and independent propositions. But we do not think either was contemplated by Congress. The land or title was to "revert"—return—go back; to revert because the statute which granted it required it to revert; revert under the statute, regardless of the common law, the statute being law of equal dignity and force.

Upon what are based the dicta that there must be an inquest of office or something equivalent? Undoubtedly upon the English constitutional maxim that the King shall not seize property held by an individual without his having an opportunity to dispute the fact giving the King a right to the property. This was a very just provision against abuse of the King's prerogative, and obviously its benefit was obtained by an alien or felon or other person by giving him a fair hearing before ousting him, without also depriving the King of his just rights from the time of forfeiture up to the time of the hearing. But this is not American Federal law, certainly not beyond its applicability and reason for being, nor would it be very consistent with other dicta or decisions of this court to the effect that the Government can, by mere legislative fiat forfeiting or disposing of such property, deprive a man of it without any opportunity to dispute the fact. It seems to be wholly inapplicable to our Federal system of dealing with public lands. The Land Office, which would do the only "seizing" that is done, is a permanent tribunal for hearings as to such facts. There is no danger that anyone will be tyrannically ousted by it without a hearing, and "the liberties of Englishmen" need not be brought over to prevent that. Nor do those liberties

of individual English subjects seem very appropriate to a case where the State of Alabama as a sovereignty would be the party requiring the inquest, or to a country where freedom, safeguarded by law, has taken the place of "liberties" qualifying royal power.

The act of 1856 does not use the words "condition subsequent," or other phrase borrowed from the common-law technical names and referring to that law.

If Congress passes a law punishing the crime of murder without defining murder, there is a manifest reference to the common law to find the definition and incidents.

If Congress had said here, simply and without adding statutory provisions covering the incidents and consequences, we hereby enact the condition subsequent that the road must be built within ten years, there would have been a similar reference to the common law.

But the language used in section 4 is plain English and complete without need of being supplemented from without. The word "revert" has no technical meaning confining it to giving a right to reenter for condition broken. Sheppard says it *suffices* to do that—not that it is confined to that. But if we give it a legal meaning, instead of understanding it as simply meaning "return to a former position," what is it? Obviously it is a verb form of the noun "reversion" or the noun "reverter," and has nothing to do with conditions or covenants of any kind. In the Loughrey Case this court treats it as giving a "possibility of reversion" before the event which turned that into a reversion *had happened*. If so, we need no reentry in this case to get title, however it may be as to possession. Gray on Perpetuities,

section 31, points out the difference between the right of reentry and possibility of reverter thus: "After the statute (of *quia emptores*) a feoffor, by the feoffment, substituted the feoffee for himself as the *lord's* tenant. By entry for breach of condition he avoided the substitution and placed himself in the same position with respect to the lord which he had formerly occupied. The right to enter was not a reversionary right, coming into effect on the termination of an estate, but was the right to substitute the estate of the grantor for the estate of the grantee. A possibility of reverter, on the other hand, did not work the substitution of one estate for another, but was essentially a reversionary interest—a returning of the land to the *lord* of whom it was held, because the tenant's estate had determined."

In Preston's Sheppard's Touchstone we are told that condition not to alien the thing granted to anyone whatsoever is void in the case of a common person as repugnant to the estate. "But in case of the King such conditions are good, [on account of the tenure of the King, since, in construction of law, the King is the donor and has a possibility of reverter.]"

According to this view the act of 1856 may well be regarded as intended to give a qualified fee. Why should the chief lord reduce his rights to a mere right to reenter for condition broken when the statute of *quia emptores* did not concern him?

Some contend that the right to have the land revert after a qualified fee is not carved out of the fee, and therefore is not a technical reversion nor technically a feudal *estate*, the fee being the whole estate and this

right something additional. But it is a title and operates by itself a return of the land, as Gray says, and accompanies the fee into whosoever hands it passes. (4 Kent, 9.) And the very notion of fee tenure implies ownership by a lord whose tenant the fee-holder was.

The supreme court of Alabama, in *Sutton & Billups v. Miller*, says:

The rule undoubtedly is that no one can take advantage of the nonperformance of a condition subsequent annexed to an estate in fee but the grantor, his heirs, or successors; and the Government is bound by this principle. But the act of Congress conferring title to these lands was not a mere grant. It was a *sale* as well as a grant.

And it was therefore held that "a sale made in contravention of the letter and policy of the law" was not voidable but void *ab initio*, and so could not be ratified.

Why the complex and unusual matters so beautifully and perspicuously provided for by section 4 of the act of 1856 should be thrown into confusion by trying to treat this law as no more than a private conveyance with an ordinary condition subsequent we do not understand. The explanation may be that this court's frequent decisions upon the more important Pacific road laws led it to suppose, without needing to inquire particularly, that the acts of 1856 were drawn in the same general spirit as those were held to be, whereas they are wholly different and to be interpreted as a distinct system, most carefully developed from prior legislation. They are arrangements with sovereign States and contemplate State action and the relations of government to government, not those of individual to individual.

The very cases which insist on bringing in a right of reentry recognize it as anomalous by requiring, not at all a reentry, but "something equivalent," usually speaking of a judicial proceeding as such equivalent.

As for dicta about the necessity for "inquest of office" in such cases or its equivalent, it is immaterial whether we are to have that or not. It has nothing to do with the nature and time of accruing of the sovereign's rights, but is an inquiry about them. (3 Blackst., 260.) It used to be supposed that a matter of record was necessary to inform the sovereign, and that records should be avoided by records. Of course, the terms of the act of 1856 are all of record, and the failure to complete the road within ten years is shown of record, because the governor's certificates are wanting from the record. "Tenant of the King is attainted of felony, the King is entitled to the land from *the time of the felony* committed; yet, if he take the profits until attainder, he is not an intruder, but he taketh the profits *without title*, and so accountable to the King." (Sir Moil Finch's case, Leonard's Reports.) If the sovereign needs an inquest of office, so as to permit the fact to be disputed or disproved, he is having it now. And now that he is having it, in order to permit a dispute as to the fact which gave him title, he takes title from the date of the fact and not from the date of the inquiry about it.

We do not believe this court, in *Schulenberg v. Harri-man*, meant by its dictum to say that the act of 1856 was a private paper under the common law. *Congress* knew how to say that, or to use words implying that, but it did not do so. It merely announced its will in simple

and original language of its own, impossible to interpret because too plain to be misunderstood. What right would the court have to ignore the language that was used, and substitute language that was not used, but rejected? And as tenant to what lord were the United States to be substituted in 1866 by their right to reenter?

The letter and policy of the law authorized sales for ten years and prohibited sales after ten years; and it is submitted that any sale after ten years was void *ab initio* as to all the world, because the law as a law failed to authorize it to be made (and nothing else could) and prohibited it to be made at the time it was made, forbidding it in the same way and with the same supreme legislative power with which it authorized sales to be made during the ten years. This you may do; that you shall not do, said the law.

The court has no difficulty in calling *void* a sale of lands beyond the 120 sections not preceded by a certificate—in other words, a sale made before the power to sell is to begin—and we are somewhat at a loss to see how that is any more obnoxious than one made after it is to cease. There may be some profound difference beyond the reach of our intelligence. As to the former period of time, the *estate* had vested and was in the grantee, just as it was in the latter period. Both periods are expressly put without and beyond the *power* to sell; sales in both are expressly *forbidden* by the supreme law.

We are not asking the court to contradict *Schulenberg v. Harriman*, since that is not necessary to our purpose. All we need is a decision as to the time when the

forfeiture begins to operate "if" the grantor enforces it, as here, by both legislative and judicial methods. In that case there was no enforcement. Third parties were litigating, and the point in question and decided was that because there was at no time, and, for aught that could be known, never would be, such enforcement by the grantor, a mere trespasser on the lands could not take it upon himself to despoil the property and the State be powerless to prevent him under State laws made for that purpose.

We do think, however, that the confusing *Schulenberg dictum* should be ignored, since nothing can be clearer than that the statute intends it to be a condition *precedent* to the sale of an acre of land which remains "unsold" at the end of ten years that the road shall have been previously completed.

The dictum says that the provision that all lands remaining unsold shall revert is no more than a provision that the grant shall be void if a condition subsequent be not performed, and that the prohibition of further sales adds nothing to the force of the provision, because if the lands are to revert that implies that no further sale is to be made. If this were the intent then the provision about reverting would *operate* only as does a provision that a grant should be void if a condition subsequent is not performed. But does it? Where such provisions are found, all sales after breach are subject to the condition subsequent and the grantor is fully protected against the purchasers. Here, we are told, the grantee could proceed to sell free of the supposed breach of condition. The grant is *then void* of the lands *then* unsold, to wit, only

those of them that may be unsold many years after "then." As to the rest of them, it does not *then* become void, or anything other than in full force and effect. And that result, of itself, points to a different construction of the statute, for it is well settled by adjudications of this court that a construction favorable to the public rights and interests must always be preferred, if one is possible. (*Sioux City R. R. v. United States*, 159 U. S., 349.) It certainly is not *impossible* to say that Congress intended what it plainly said, and certainly is not *unavoidable* to hold that Congress meant that its language should be "no more than" a provision that the grant should be void if a condition subsequent should not be performed. One way to save the dictum seems to be to make it mean that the express power to sell an indefeasible title is put an end to by the provision that the land shall revert, leaving the title and a power to sell growing merely out of the continued existence of title in the grantee. Such a power to sell would, as already suggested, be to sell subject to the grantor's rights growing out of the breach. The passage of the *estate in presenti* by the words "be and is hereby granted" does not carry with it the passage *in presenti* of the power to sell, to which that phrase does not apply. That is a distinct thing from the estate and may as well terminate before it as begin after it, which it certainly does as to lands beyond the first section.

But we see no special reason for attempting to save a dictum which is so foreign to the point decided in the case, and so opposed to the primary rule of construction, that where language is plain it shall be held to mean simply what it says. There is no rule of construction,

though one seems to be needed, that plain language does not mean the *opposite* of what it says.

We think the Loughrey opinion goes sufficiently far for our purpose, in the direction of ignoring *Schulenberg v. Harriman*, when, in the course of it the court abandons the theory of a mere right of reentry for condition broken and distinctly affirms the inconsistent theory of "a possibility of reversion, a contingent remainder." This gives us a limitation instead of a condition, gives us an *estate*, and not only so, but the contingency has happened, so that the estate has "vested in possession." The court's remark about overruling the *Schulenberg Case* shows that it knew it was disregarding it, except as to the very point decided—"the right to the timber so cut as against the trespassers"—and was rather disposed to overrule it as to that, which logically seemed to be a necessary consequence of its theory of a remainder.

The dissenting opinion in the Loughrey Case, concurred in by the Chief Justice and Justices White and Harlan, goes far beyond what we need in this case, and the very point decided by the majority was that there was not, at the time of conversion, an immediate right of possession of the timber, as distinguished from the land and as distinguished from a right to an accounting as to the value of the timber, if recovered by the State.

We are asking the court to say that while, *quoad* third persons, the title remained that of the State "if" there was at no time any enforcement of its rights by the Federal Government; *quoad* the grantor the *power of alienation* which accompanied the estate was precisely what the law said it should be and terminated at the end

of ten years, because the law expressly said it should do so in the event which happened.

There *being*, at any time, an enforcement by the Government of the "condition" that the land shall *then* revert and no further sales be made, all sales in violation of law and when there was a termination of the power to sell, are now and here to be regarded as void *ab initio*. If the court will not say this, it must still decide in our favor.

Kent says (vol. 4, 126): "It is a general principle of law that he who enters for a condition broken becomes seized of his first estate, and he avoids, of course, all intermediate charges and incumbrances."

Neither need we ask the court to hold that the granting act made the State a trustee. In *Tucker v. Ferguson* (22 Wall., 527) the court distinctly affirms that the State "became the *agent* and *trustee* of the United States." What the court in that case decided was that Osceola County, Mich., which is *more than 40 miles east* of Pere Marquette (now Ludington), could tax lands in the county, "when the State, proceeding in the execution of the trust, had transferred her entire title to the company and they had perfected their title and *acquired the right to sell*," which they had done by building west to *within 40 miles of Pere Marquette* (p. 536). By an amendatory law "the reverter was limited to the lands to which the right to sell had not attached," and the whole road was completed before the case was decided (p. 543). See also *Sioux City R. R. v. United States* (159 U. S., 349). In a similar law (act of July 4, 1866), granting lands in the

same way to Missouri and Arkansas "to aid in the construction and extension of a railroad," Congress refers to its grant as "vesting the title to the lands herein recited *for the trust purpose aforesaid.*" If there was a trust in our case, it failed and expired, and thereupon the Government's equitable and beneficial estate drew to it the legal ownership.

The law of Alabama accepting the grant and turning the whole over, without consideration, to the Tennessee and Coosa Company could not have been intended as a sale within the meaning of the act of Congress, because it is not to be supposed that the State would violate the trust at the time of accepting it by selling all lands in advance of the certificates of completed road, and otherwise than "only as the work progresses;" neither could it be such a sale, because, as the State was to hold the lands, was to sell them, and they—that is, of course, the *proceeds* of their sale—were to be "exclusively applied in the construction of" the road, the act of Congress clearly used the word "sale" in the ordinary sense—an exchange for a "price or prices" or an "amount" of money (see statutes of 1845, etc., above quoted; otherwise the sales would give no proceeds to apply. As a government acts only through agents, the transfer to the company was but a convenient way of avoiding the establishment of a State land department to sell the lands. However, the appellees have no confidence in the supposed proposition and do not make it, and the trial court could not well rely upon it after what it said about imputing an act of bad faith to a State government. And see quotation above from *Tucker v. Ferguson*.

As to anything contrary to what we contend for found in the *Schulenberg* opinion, we again suggest Chief Justice Marshall's maxim and the following often quoted and approved remarks of Judge Carruthers (1 Sneed, Tenn., 695):

The members of a court may often agree in a decision—the final *result* in a case—but differ widely as to the reasons and principles conducting their minds to the same conclusion. It is, then, the conclusion only, and not the process by which it is reached, which is the opinion of the court, and authority in other cases. The law is thus far settled, but no further. The reasoning adopted, the analogies and illustrations presented, in real or supposed cases, in an opinion, may be used as argument, but not as authority. In these the whole court may concur, or they may not. So of the principles concurred in and laid down as governing the point in judgment so far as it goes, or seems to go, beyond the case under consideration. If this were not so the writer of an opinion would be under the necessity in each case, though his mind is concentrated upon the case in hand and the principles announced directed to that, to protract and uselessly encumber his opinion with all the restrictions, exceptions, limitations, and qualifications which every variety of facts and change of phase in cases might render necessary.

The *Schulenberg* and *Willamette Valley* cases speak of what happens when there is "absent" from the controversy the grantor and his insistence upon his rights.

No question of title was necessary to the decision of the former case. That case ought to have been decided the same way, though the United States lands in the

State had never been granted at all, for a State can by law protect lands of the United States from trespassers and probably is in duty bound to do so, as it protects the property of all others within its borders.

The act of 1856 is a law, and all is void that it forbids or lies beyond the power it creates to deal with public lands of the United States. If it is a mere grant, it is a sovereign grant by the "chief lord" and gave a qualified fee, which came back according to the terms of the grant in 1866. No title could thereafter be given to third parties by the grantee. Or we can call it a grant giving a conditional reversion, and the condition happened; or "a possibility of reversion," and the possibility became an existent fact; or a trust, and the trust failed; or a "contingent remainder," and the contingency took place.

But if it must be that there was only a grant with a condition to reenter upon breach, the forfeiture was incurred, and the grantor has taken advantage of it and "avoids all intermediate charges and encumbrances." On any reasonable construction of the act of 1856 we are entitled to a favorable decision.

We again venture to suggest our preference for the startling and original theory that the act of 1856 was and is the law of this matter and that the same is too plain to admit of interpretation.

Before closing this brief we desire to point out the evidence that the \$111,000 paid Carlisle in April, 1888, was not additional to the lands alleged to have been sold him, but took the place of those lands, his "claims to the lands of this company" being then relinquished to the

company. This will be found on record pages 143, 168, and 141. It is settled that one who is not a bona fide purchaser can not become one by transferring to a bona fide purchaser and then buying the title back.

As we have suggested in the other brief, there is no real adjudication of the *facts* upon which must depend the question whether in law Carlisle is a *bona fide* purchaser. This court will perceive this on determining upon what facts that legal question must depend. Hence there should be no hesitation in making an original examination of the evidence if the question is deemed of any importance.

That Littleton is in section 20, T. 11, R. 5 E. (12 Land Dec., 255), and that, therefore, not more than half the lands in Carlisle's quitclaim are opposite constructed road, is a matter of which the court will take judicial notice. They lie along the 6 miles of road between Littleton and the point 20 miles from Guntersville, in section 29, T. 10, R. 5 E., as shown upon a Land Office map, which we expect to exhibit to the court.

It may well be questioned whether any lands were opposite completed portions of road within the meaning of the act of September, 1890, no section of 20 miles having been completed. Why should the forfeiting act not intend to forfeit all "unearned" lands not legitimately "sold?" All were "unearned" in this case, and none legitimately sold. (*Sioux City R. R. v. United States*, 349.) We do not see why the forfeiture law was not *in pari materia* with clauses universally contained in the granting acts. Roads whose partial completion had made lands irreclaimable were *so far* not included in

the act taking advantage of failures under previous laws. We do not base this argument on the word "portion," but on the probability of an intent to make the act which was enforcing forfeiture for failure to complete as broad as that forfeiture for failure to complete, as incurred under the universal terms of the granting acts.

That the court may have no lurking notion that the Government is dealing harshly in this matter, reference is made to the Alabama acts of 1854, 1860, and 1870, showing that the Federal Government has paid \$250,000 for this road, of which our company built a useless fragment of 5 miles, to the case of *Tennessee and Coosa R. R. Co. v. East Alabama R. Co.* (73 Ala., 426), and the acts of the State referred to in the syllabus of that case.

Respectfully submitted.

CHARLES W. RUSSELL,
Department of Justice.

J. K. RICHARDS,
Solicitor-General.

N. W.

Brief of Goodhue for Appell.

Office Supreme Court U. S.
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APR 13 1899

JAMES H. KENNEDY
Clerk

NO. 274.

Filed April 13, 1899.

SUPREME COURT

—OF THE—

UNITED STATES.

THE UNITED STATES, Appellant,

vs.

THE TENNESSEE & COOSA RAILROAD CO., HUGH
CARLISLE, ET ALS, Appellees.

BRIEF OF AMOS E. GOODHUE,

ON BEHALF OF THE TENNESSEE & COOSA RAILROAD COMPANY,

ANNA J. HENDERSON, HEIR OF HUGH CARLISLE, AND

MARY CARLISLE, THE WIDOW OF HUGH CARLISLE.

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MARY CARLISLE, THE WIDOW OF HUGH CARLISLE.

STATEMENT OF CASE.

On the 3d day of June, 1856, an Act of Congress was approved entitled, "An Act granting public lands in alternate sections to the State of Alabama to aid in the con-

struction of certain railroads in said State." Among the provisions of said Act are the following:

"Be it enacted, etc., That there be and is hereby granted to the State of Alabama, for the purpose of aiding in the construction of railroads; from the Tennessee river, at or near Gunter's landing to Gadsden, on the Coosa river, *
* * * * every alternate section of land designated by odd numbers for six sections in width on each side of said road."

"Sec. 3. And be it further enacted, That the said lands hereby granted to the said State shall be subject to the disposal of the Legislature thereof for the purposes aforesaid and no other. * * *

"Sec. 4. And be it further enacted, That the lands hereby granted to said State shall be disposed of by said State only in manner following, that is to say: That a quantity of land, not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the Governor of said State shall certify to the Secretary of the Interior, that any twenty continuous miles of any of said roads is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each such roads, may be sold; and so, from time to time, until said roads are completed; and if any of said roads is not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States."

On the 20th day of January, 1858, the Legislature of Alabama passed an act accepting the grant and granting to

the Tennessee & Coosa Railroad Co., such portion of the lands as were granted to the State by the Congressional act to aid in the construction of a railroad from Gunter's Landing to Gadsden.

On the 18th day of January, 1859, the Tennessee & Coosa Railroad Co., filed in the office of the Secretary of the Interior its map of definite location. The road thus located was about thirty-six miles in length. The initial point from which the first twenty miles commenced was Guntersville. The one hundred and twenty sections of land to which the Tennessee & Coosa Railroad Co., was entitled in advance of the completion of any portion of the road were calculated on the basis of Guntersville as the starting point; and embraced the odd numbered sections on either side of the line of road as located for twenty miles out from Guntersville, southeast toward Gadsden. These lands were duly certified to the Tennessee & Coosa Railroad Co., in June 1860. (See exhibit "A" to original bill, pages 16 to 30 printed transcript.)

Prior to the breaking out of the war between the States much work was done on the line of road. The road was made ready for the cross-ties along a portion of the route. Great and expensive cuts were made through the mountains between Guntersville and Littleton in the direction of Gadsden. But in fact no part of the road was at this time completed and put in operation. The work on a large part of the road was let to Hugh Carlisle in the year 1859. Carlisle contracted with the Tennessee & Coosa Railroad Co., to construct a part of the road, (See pages 210 to 212 of the printed transcript.) Reverses of one sort and another, which are fully set out in the answers of Hugh Carlisle and

of the Tennessee & Coosa Railroad Co., delayed and hindered the completion of the road.

In 1871 the road from Gadsden to Attalla was completed, put in operation, and has been in operation ever since up to the present time. In 1887 the road from Attalla to Littleton was completed and put in operation. Since 1887 the road from Gadsden to Littleton, a distance of 10.22 miles, has been in continuous operation. IT ALSO APPEARS FROM THE RECORDS THAT PRIOR TO THE FILING OF THE BILL IN THIS CASE THE ENTIRE ROAD FROM GADSDEN TO GUNTERSVILLE WAS COMPLETED AND PUT IN OPERATION. (See statement of witness Curry on page 239 of printed transcript, and also see statement in opinion of Judge Bruce on page 255 of transcript, where Judge Bruce says: "It is to be noted in this connection that at the date of the passage of the forfeiture act, the said railroad as contemplated in the granting act from Guntersville on the Tennessee river to Gadsden on the Coosa was in process of construction, nearing completion, AND WAS, IN FACT, COMPLETED AND IN ACTUAL OPERATION BEFORE THIS BILL WAS FILED.")

Although for the purpose of dividing the road into sections of twenty miles each as provided in the granting act, Guntersville was the starting point, yet the iron was laid from Gadsden as a starting point and the road was first built and put in operation from Gadsden northward as far as Littleton in the direction of Guntersville. Littleton is 10 and 22-100 miles north of Gadsden. Attalla is five miles north of Gadsden on the line between Gadsden and Littleton. Attalla is the point of intersection of the Tennessee & Coosa Railroad and the Alabama Great Southern Railroad. The Alabama Great Southern Railroad was formerly

known as the Alabama & Chattanooga Railroad. The Alabama & Chattanooga Railroad Co. is also a land grant company, so that the odd numbered sections opposite to that part of the Tennessee & Coosa Railroad extending from Gadsden to Littleton are within the conflicting limits of the two grant, and in these lands each railroad company becomes entitled to an undivided moiety.

In the period of time intervening between 1872 and 1887 the Tennessee & Coosa River Railroad Co., sold a great portion of the lands in controversy in small parcels of from forty to one hundred and sixty acres to numerous settlers who paid part of the purchase money, giving notes for balance and taking in each instance bonds for titles from the Tennessee & Coosa River Railroad Co. By reference to pages 97 to 123 of the record it will be seen that from five hundred to six hundred such sales were made.

After the war between the states the Tennessee & Coosa River Railroad Co. had no money. Carlisle was a man of wealth. On the 14th day of December, 1883, the Board of Directors of the Tennessee & Coosa River Railroad Co. passed certain resolutions which will be found on pages 212 and 213 of the record. The purport of these resolutions was to recognize the indebtedness due to Carlisle for work previously done; to contract with him to construct, build and equip the road and put it in running order, and to declare a lien on the road and all its property, including the lands in controversy, to secure the amount the company owed Carlisle, and also whatever further debt might be incurred in his efforts to complete the road. And here the attention of the Court may be called to the fact that in 1859 the T. & C. Railroad Co. executed a mortgage on all its property to secure \$400,000 of bonds. These bonds were in the de-

nomination of \$1,000 each. In 1860 Judge Wyeth, the president of the Tennessee & Coosa Railroad Co., turned over to Hugh Carlisle eleven of these bonds to secure the debt due Carlisle. These bonds remained in Carlisle's possession until February, 1887, when the deeds conveying the lands in ~~the~~ controversy to Carlisle, were executed by the Tennessee & Coosa Railroad Co., and the bonds then surrendered for cancellation.

During the years 1884-5-6-7, Carlisle continued to operate the road between Gadsden and Attalla and to push the work of construction between Attalla and Guntersville. During that period of time the company had not a single dollar except what it got from Hugh Carlisle. His own testimony, the testimony of the company's bookkeeper, Mark Johnson, the testimony of the company's attorney, Wm. H. Denson, and Henry L. Miller, a director, abundantly establish the expenditures made by Carlisle on behalf of the company during this period of time. In this way the T. & C. R. R. Co. became indebted to Carlisle in a sum exceeding \$100,000. In part payment of this indebtedness the T. & C. R. R. Co. conveyed to Carlisle 28,789 51-100 acres of land at \$2.50 per acre. This deed bears date February 7, 1887, and will be found on pages 43 to 51 of the transcript. The land embraced in this deed is land which had been certified to the T. & C. R. R. Co. as a part of the first one hundred and twenty sections, which by the terms of the granting act the railroad company was authorized to sell in advance of the completion of any part of the road. On the 4th day of April, 1887, the T. & C. R. R. Co., in further partial payment of this debt conveyed to Hugh Carlisle 17,410 23-100 acres at \$1.25 an acre. This deed will be found on pages 27 to 4 of the transcript. The land de-

scribed in this deed was land lying beyond the first 120 sections was within the primary conflicting limits of the land grants in aid of the Tennessee & Coosa Railroad Co., and the Alabama & Chattanooga Railroad Co. The Tennessee & Coosa Railroad Co. therefore had an undivided moiety in this land.

On the 29th day of September, 1890, Congress passed an act, the material portion of which is as follows:

"Be it enacted, That there is hereby forfeited to the United States, and the United States hereby resumes the title thereto, all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminus with the portion of any such railroad not now completed and in operation for the construction or benefit of which such lands were granted, and all such lands are declared to be a part of the public domain.

On the 31st day of October, 1891, the bill in this case was filed seeking to declare and enforce a forfeiture of the entire grant because of the non-compliance with the conditions of the grant. Among the allegations of the bill will be found the following: "Orator states, charges and avers, that both of said instruments were made during the year 1887, more than twenty years after the expiration of the time, within which the Act of June 3, 1856, required the said railroad to be constructed and completed. Orator avers that at the time said instruments were executed, the said railroad company had no right, power or authority to execute said instruments or to convey any right, title or interest in or to said lands, and that the officers, agents and directors of the said railroad company, and the said Hugh Carlisle well knew this fact, and for the purpose and with the intention of preventing the reversion of said lands to

the United States, the said company executed, and the said Carlisle accepted the pretended conveyances; that while said conveyances recite a valuable consideration paid by said Carlisle for said lands, in truth and in fact no money or thing of value was paid therefor by said Carlisle, but the whole transaction was merely a device to mislead and deceive and for the purpose of enabling the said Hugh Carlisle to set up and claim that he held said lands as a purchaser for value and in good faith from said Railroad Company. That said conveyances were not made, nor was the said land sold for the purpose of aiding in the construction of said railroad, or any part thereof, that no part of any consideration recited to have been paid for said lands was used in the construction of said railroad, that said Carlisle was, and is not, a bona fide purchaser for value of any of said lands, but a purchaser mala fide, well knowing that the said purchase was in violation of the terms of the act of June 3, 1856. Orator further avers that while said Carlisle claims to own these lands under the conveyance made to him by said railroad company, he in truth and in fact holds the same under a secret trust for said railroad company and the stockholders thereof. * * * And by resolution of this board of directors so composed the conveyances marked exhibits "D" and "E" were made and executed to said Carlisle for the purpose of defrauding your orator, the United States, out of these lands." The answers of Hugh Carlisle and the Tennessee & Coosa Railroad Co. specifically and fully deny these averments, and set up that all the sales made by the Tennessee & Coosa Railroad Co., whether to Hugh Carlisle or other parties, were made in good faith

and in strict accordance with the terms of the granting act.

The litigation in the court below was conducted in the name of the United States by Hon. F. S. White, who was employed for this purpose by the settlers on the land, who were mainly purchasers from the Tennessee & Coosa Railroad Co. holding bonds for title from the Tennessee & Coosa Railroad Co., only a small part of the purchase money having been paid. The object of these settlers in pressing this litigation was to avoid the payment of the purchase money due to the Tennessee & Coosa Railroad Co., and obtain the land from the Government by homestead entry. (See statement of W. W. Curry, Jr., chairman of the committee that employed Mr. White, on page 238 of the transcript.)

A part of the land conveyed to Carlisle had been previously sold (but not conveyed) to the settlers above referred to, when this was the case, Carlisle stepped into the shoes of the railroad company in regard to such lands taking the purchase money notes and assuming the obligation of the company to convey upon full payment of purchase money. Upon the hearing of the case the court below ascertained the following facts. (See pages 255-6 of transcript.)

"First: The court finds that prior to the 29th day of September, 1890, the Tennessee & Coosa Railroad Co. had sold to bona fide purchasers all the lands embraced in the first 120 sections, which by the terms of the granting act it was authorized to sell in advance of the construction of the road. That these sales were bona fide, and made to aid in the construction of the road. That the allegations of the bill, that the sale to Carlisle, was without consideration and colorable, are not sustained by the evidence, but the sale to

Carlisle was bona fide and based on good consideration, and the proceeds of the sale used in the construction and equipment of the road."

"Second: The court finds that the Tennessee & Coosa Railroad from Gadsden to Littleton, a distance of 10.22 miles was completed and in operation on and before the 29th day of September, 1890, and that lands described in exhibit "B" to the original bill, to-wit: The lands embraced in and conveyed by the deeds from the Tennessee & Coosa Railroad Co. to Hugh Carlisle, bearing date the 4th day of April, 1887, are lands which lie opposite to that part of the road which was completed and in operation on the 29th day of September, 1890, and therefore not within the lands forfeited by the act of September 29, 1890."

Upon these facts the Court was of the opinion that there had been no forfeiture of the lands as to which a judicial declaration of forfeiture was sought by the bill, and accordingly ordered and decreed that the relief sought by the bill be denied and the bill dismissed. From this decree the United States appealed to the Circuit Court of Appeals for the Fifth Circuit. On the 20th day of April 1897, the Circuit Court of Appeals affirmed the decree of the Circuit Court, rendering a very short opinion which tersely sums up the whole case in a nut shell.

"Considering that the Tennessee & Coosa Railroad Co. had the right to sell the one hundred and twenty sections of the land grant before the act of forfeiture, and that the forfeiture act of 1890 did not forfeit any portion of the land grant lying opposite to and coterminus with that portion of the railroad then completed and in operation we find no error

in the decree appealed from, and it is therefore affirmed." From this decree of affirmance the United States again appeals to this court.

PROPOSITIONS OF LAW INVOLVED IN THE CASE.

The bill seeks to enforce an alleged forfeiture under the act of Sept. 29, 1890. The land sought to be forfeited is:

First: The one hundred and twenty sections which the Tennessee & Coosa Railroad Company was authorized to sell in advance of the completion of the road or any part thereof.

Second: Land lying opposite to that part of the road which was completed and in operation on Sept. 29, 1890, the date of the passage of the forfeiture act.

The findings of fact made by the trial court and affirmed by the Circuit Court of Appeals are binding here, if there be any evidence to support them.

Dravo vs. Fabel, 131 U. S. 487.

Runkle vs. Burnham, 153 U. S. 216.

An examination of the record will show that the findings of fact are abundantly sustained by the evidence. In this argument therefore, facts found by the trial judge will be assumed as true.

With regard to the first one hundred and twenty sections, the fact is that this land was sold by the Tennessee & Coosa Railroad Co. prior to September 29, 1890, to bona fide purchasers, and the proceeds of sale used in the construction and equipment of the road. The bulk of the land was sold to Carlisle, and the Court specially finds that "the sale to Carlisle was bona fide, based on a good consideration,

and the proceeds of sale used in the construction and equipment of the road." No part of this land was sold prior to June 3, 1866, but all was in good faith sold before the passage of the forfeiture act. The contention on the part of the United States is that the purchasers having bought after the expiration of the ten years named in the act, obtained no title. The contention on the part of appellees with regard to the first one hundred and twenty sections is four-fold.

In the first place we contend that the condition in the act of June 3, 1856, is a condition subsequent, is not self-operative, and does not take effect until the United States takes some action to enforce the condition, and that until such action is taken the title to the land, together with the right to sell the land, remains in the land grant company.

We insist that this contention is fully sustained by the leading case:

Schulenberg vs. Harriman, 21 Wallace 44.

"The provision in the act of Congress of 1856, that all lands remaining unsold after ten years shall revert to the United States, if the road be not then completed, is no more than a provision that the grant shall be void if a condition subsequent be not performed. * * * * The prohibition against further sale if the road be not completed within the period prescribed adds nothing to the force of the provision. A cessation of sales in that event is implied in the condition that the land shall then revert; if the condition be not enforced, THE POWER TO SELL CONTINUES AS BEFORE ITS BREACH limited only by the

objects of the grant and the manner of sale prescribed in the act."

In *Railroad Land Co. vs. Courtright*, 21 Wallace 310, this language is used in the opinion of the Court: "The further conditions as to the completion of the road imposed by the State ~~were conditions~~ ^{*Courtright did*} subsequent, and not conditions precedent as ~~imposed~~ by the defendant. The terms in which the right is reserved by the act of the State to resume the lands granted imply what the previous language of the act declares, that a present transfer was made and not one dependent upon conditions to be previously performed. The right is by them restricted to such lands as AT THE TIME OF THE RESUMPTION had not been previously disposed of. The resumption, therefore, of the grant by the failure of the first company to complete the road did not impair the title to the lands which the act of Congress authorized to be sold in advance of such completion and which were sold by that company."

It will be noted that in the *Courtright* case the Court fixes the limit of time in which the lands may be lawfully disposed of AT THE TIME OF THE RESUMPTION and not at the time of the breach of the condition. In the *Courtright* case the facts are very similar to the facts in the case at the bar. In the *Courtright* case the Iowa Central Air Line Railway Company took the land subject to the conditions imposed by an act of the Legislature providing that seventy-five miles should be completed within three years from Dec. 1, 1856. The railroad company never did complete any portion of the road, but in 1857-8 did some grading. The lands were sold to one *Courtright*, a contractor, to whom the railroad company had become indebted for grading. Subsequently a forfeiture was declared and

the lands were granted again to another company. This court held Courtright's title good.

The construction contended for by opposing counsel would allow the United States to remain silent until the road was completed and then enforce a forfeiture by reason of the breach of condition occurring years before the completion of the road.

"Forfeiture for breach of condition that the road should be completed in a specified time could only be enforced by legislative enactment, or judicial proceedings, IN THE ABSENCE OF WHICH THE ROAD MIGHT BE COMPLETED AND FORFEITURE THEREBY PREVENTED EVEN AFTER THE TIME LIMITED HAD EXPIRED."

United States vs. Willamette Val. C. M. Wagon Road Co., 55 Fed. Rep. 712.

Bybee vs. Oregon & California R. R. Co., 139 U. S. 675.

U. S. vs. Burlington & M. R. R. Co., 98 U. S. 334.

In the case of Bybee vs Oregon & California R. R. Co., above cited, the Supreme Court approves the remark of the learned Judge of the Court below: "It is to become null only so far as to allow the grantor to resume the grant on a failure to comply with the conditions, and then only as to the lands remaining unpatented or unearned; and but for this qualification the grant might have been wholly resumed or forfeited for any failure to comply with the conditions even in the construction of the last mile. And this construction of the section is in harmony with the general purpose of the act and the policy of Congress in making the grant. A condition that would put it beyond the power of the Company to build the last mile of its road by the aid of the granted land is manifestly so harsh and unjust, that the breach of such conditions ought not to be treated as a for-

feiture, unless the language of the act be so clear and unambiguous as to admit of no other reasonable construction."

Lands which were lawfully sold under lawful authority granted by a former Act of Congress were not subject to forfeiture, and do not fall within the spirit, and meaning, and purpose of the Forfeiture Act, although they were fully within the letter of the Act. "It is not the words of the law," says the ancient Plowden, "but the internal sense of it, that makes the law: the letter of the law is the body; the sense and reason of the law is the soul."

The Forfeiture Act will not be so construed as to divest vested rights.

"The legislative power extends only to the making of laws and in its exercise it is limited and restrained by the paramount authority of the Federal and State Constitution. It cannot directly reach the property or vested rights of the citizen by providing for their forfeiture or transfer to another without trial and judgment in the Court."

Cooley on Constitutional Limitations 100.

The authorities cited by opposing counsel to the effect that an estate upon condition subsequent is alienable and passes into the hands of the alienee, subject to be divested by the re-entry of the grantor, have no application to the case at bar. The grant in question armed the State with the unqualified right to dispose of the land for the purpose of constructing the railroad; and it is undisputed that if the sale had occurred during the ten years, the title in the purchaser would be perfect **WHETHER THE ROAD WAS EVER COMPLETED OR NOT**. Then if this estate continues until re-entry (or what is equivalent to re-entry) by the grantor, the power to sell also continues, as stated in the *Schulenberg* case "as before the breach." Surely Con-

gress cannot be accused of the folly of leaving this land for twenty-five years, after the ten years had expired, in the hands of the State and the railroad company when neither the State nor railroad company had the right further to apply the lands to the uses and purposes set forth in the granting act. The non-action of Congress implied the consent of Congress that the State and railroad company might continue to apply the lands to the uses and purposes named in the granting act "limited only by the objects of the grant and the manner of sale prescribed in the act." It will be observed that in 1887 Congress expressly declined to forfeit these grants, but directed their adjustment. See Act approved March 3d, 1887, Supplement to Revised Statutes, Vol. I., page 564. The record shows that in the case at bar this adjustment was had. See pages 123-125 record.

The doctrine laid down in the leading cases of *Schulenberg vs. Harriman and Railroad Land Company vs. Court-right* cited *supra* has been frequently reaffirmed by the Supreme Court of the United States.

Deseret Salt Company vs. Tarpey, 142 U. S. 241.

Wisconsin Railroad Company vs. Price County, 133 U. S. 496.

United States vs. Southern Pacific Railroad Company, 146 U. S. 570.

St. Paul Railroad Company vs. Phelps, 137 U. S. 523.

In *Mathis vs. Tennessee & Coosa Railroad Company*, 83 Alabama 415, the Supreme Court of Alabama passing on the title to a portion of the lands involved in this suit declared in reference to a sale made by the Tennessee & Coosa Railroad Company to Mathis in 1877 (after the ten years had expired), that if the land lies in the first one hundred and

twenty sections, the railroad company had the right to sell and Mathis got a good title.

We call attention to the fact that the construction contended for by counsel for appellees is the construction uniformly given to such granting acts by the Department of the Interior. In *re Wisconsin Railroad Company* 6th Departmental Decisions 190, Secretary Lamar in construing a grant to the State of Wisconsin, similar to the one now under consideration, said: "It seems to me, in view of the language of the Supreme Court, that the prohibition against the issuance of patents like prohibition against further sales adds nothing to the force of the provision. It is but the expression of that which was necessarily implied. The provision that the land should revert on the happening of the contingency necessarily implied equally the non-issue of patents and the stoppage of sales. The whole section and the whole act must be construed together and the object of Congress ascertained. The Supreme Court says: That object was no more than a provision that the grant shall be void if a condition subsequent be not performed. Upon failure to perform the condition subsequent, it was in the power of Congress alone to declare the forfeiture; and if the forfeiture was not enforced, the Court says: 'The power to sell continues as before its breach, limited only by the objects of the grant and the manner of the sale supplied by the act.' No forfeiture having been declared in relation to this grant, THE POWER OF SALE THEREUNDER CONTINUES AS THOUGH NO BREACH OF CONDITION HAD OCCURRED, AND THE PARTIES IN INTEREST ARE ENTITLED TO PATENTS AS EVIDENCE OF THEIR TITLE AS TO ALL THE LANDS ALONG THE CONSTRUCTED PORTION OF SAID ROAD."

To the same effect will be found an able and lengthy opinion of Secretary Lamar accompanying an opinion of Vivian Brent, Assistant Attorney-General, in re Wisconsin R. R. Mortgage Land Co., 6th Dept. Dec., page 81. In this case Secretary Lamar uses this language: "In as much then as after the lapse of twelve years from the rendition of that decision no forfeiture has been enforced by or under authority of Congress, the title of the State is unimpaired to the lands described in grant." (See also opinion of Secretary Lamar in re Oregon Central R. R. 5th Dept. Dec. 549, and in re Chicago, St. Paul M. & O. R. R. Co., 5th Dept. Dec. 511.)

In the letter of Hon. John W. Noble to the Commissioner of the General Land Office, dated Jan. 30, 1891, in reference to the land grant in question in this case the Secretary of the Interior says: "I think it is well settled that if the 120 sections certified to the State have been sold to bona fide purchasers under the authority contained in the fourth section of the granting act these sections are not in any manner affected by the forfeiture act for the reason that the act of Congress making the grant authorized the sale of said 120 sections in advance of the construction of any part of the road free from any restrictions as to what part of the road the land should be taken, provided they were included in a continuous length of twenty miles on each side of said road, and the purchasers of said sections took a valid title to the property, although no part of the road was constructed at the time, WHICH IF IN THE HANDS OF BONA FIDE PURCHASERS AT THE DATE OF THE FORFEITURE ACT OF SEPT 29TH, 1890, WAS NOT IN ANY MANNER AFFECTED BY SAID

ACT FORFEITING THE GRANT TO THE STATE TO AID IN THE CONSTRUCTION OF SAID ROAD."

If our contention as to the construction of the granting act be correct, then the equity of the bill filed by the United States in the case at bar rests entirely upon the allegations in the bill to the effect that Carlisle was not a bona fide purchaser, paid nothing for the lands, and holds the same in secret trust for the railroad company and the stockholders thereof. The trial court found that these allegations were not sustained by the evidence and that the sale to Carlisle was bona fide and based on a good consideration, and proceeds were used in the construction of the road. Then, if it be true that the right to sell continued after the breach up to the time of declaration of forfeiture, it follows that as to the first one hundred and twenty sections the decree was right and it should be affirmed.

Our second contention with regard to this one hundred and twenty sections is that as to the first one hundred and twenty sections the grant was by the terms of the granting act AN ABSOLUTE, UNCONDITIONAL GRANT, and THEREFORE NOT SUBJECT TO FORFEITURE, and that as the lands in controversy had been lawfully certified to the State and by the State conveyed to the railroad company in 1860, THE FORFEITURE ACT HAS NO REFERENCE TO THESE LANDS AND REFERS ONLY TO LANDS THAT HAD NOT BEEN SO CERTIFIED.

By reference to the act of June 3, 1856, it will be observed that the State was authorized to sell the first one hundred and twenty sections without any condition whatever and that as each twenty miles were completed another one hundred and twenty sections is authorized to be sold,

and the section of the act referred to concludes, "If any of said road is not completed within ten years no further sale shall be made, and the lands unsold shall revert to the United States." Now what is meant by "no further sale?" We insist that this means no sale of other and different lands than those authorized to be sold by the preceding clauses of the act, shall be made. What is meant by the "lands unsold?" We insist this means the lands that have not, by the preceding terms of the act, been authorized to be sold. Neither of these expressions refer to land that have been lawfully certified to the State or Railroad Company. Lawfully certified lands are regarded as earned lands and are not subject to forfeiture.

The Tennessee & Coosa Railroad Co. holds certificates from the Land Department to these lands. These certificates are by the granting act authorized to be issued as to the first one hundred and twenty sections in advance of the completion of any part of the road. These certificates are equivalent to patents, and are "evidence that the grantee has complied with the conditions of the grant, and to that extent that the grant was relieved from the possibility of forfeiture for breach of its conditions."

Deseret Salt Company vs. Tarpey, 142 U. S. 251.

Frasher vs. O'Connor, 115 U. S. 102.

Marquez vs. Frisbie, 101 U. S. 473.

Maxwell Land Grant case, 121 U. S. 381.

In the case of the United States vs. Stone, 2 Wallace 525, the Supreme Court of the United States says, "A patent is the highest evidence of title and is conclusive against the government, and all claiming junior patents or titles

until it is set aside or annulled by some competent tribunal."

This construction of the granting act is expressly declared by the Supreme Court of the United States in the case of Railroad Land Company vs. Courtright, 21 Wallace 310. "The act of Congress by its express language authorized the sale of one hundred and twenty sections in advance of the construction of any part of the road. IT WAS ONLY AS TO THE SALE OF THE REMAINING SECTION THAT THE PROVISION REQUIRING A PREVIOUS COMPLETION OF TWENTY MILES APPLIES. IT IS TRUE IT WAS THE SOLE OBJECT OF THE GRANT TO AID IN THE CONSTRUCTION OF THE RAILROAD, AND FOR THAT PURPOSE THE SALE OF THE LAND WAS ONLY ALLOWED, AS THE ROAD WAS COMPLETED IN DIVISIONS, EXCEPT AS TO ONE HUNDRED AND TWENTY SECTIONS. THE EVIDENT INTENTION OF CONGRESS IN MAKING THIS EXCEPTION WAS TO FURNISH AID FOR SUCH PRELIMINARY WORK AS WOULD BE REQUIRED BEFORE THE CONSTRUCTION OF ANY PART OF THE ROAD. NO CONDITIONS, THEREFORE, OF ANY KIND WERE IMPOSED UPON THE STATE IN THE DISPOSITION OF THIS QUANTITY, CONGRESS RELYING UPON THE GOOD FAITH OF THE STATE TO SEE THAT ITS PROCEEDS WERE APPLIED FOR THE PURPOSES CONTEMPLATED."

The forfeiture act is in harmony with this construction of the granting act. The first section of the forfeiture act declares that the lands forfeited are a part of the public domain. The second section provides for the entry of such lands under the homestead law. And the third section pro-

vides for the issuance of patents to persons other than the railroad company. None of these sections contemplate judicial proceedings to annul a certificate or patent. They all contemplate the immediate summary disposition of the forfeited lands by action of the Department. They evidently refer to lands which have never been certified to the State or railroad company. The effect of this forfeiture act is simply to open for entry such lands as had been withdrawn from entry by reason of the land grant, but had not been certified to the State or railroad company. If this contention be sustained, and it is ascertained and declared by this Court that the grant of the first one hundred and twenty sections is an absolute unconditional grant then it follows necessarily that as to the one hundred and twenty sections there has been no forfeiture even though every allegation of the bill with regard to bad faith and want of consideration had been fully sustained by the evidence.

Our third contention is that as in 1860 (within the ten years) the Tennessee & Coosa Railroad Co. executed a mortgage upon the lands in controversy to secure \$400,000 of bonds, of which said bonds eleven were placed in the hands of Hugh Carlisle to secure the debt due him for construction, and remained in his hands until he accepted the conveyance of the lands in controversy in payment of that debt, there was such a sale within the ten years as relieved the land from any possibility of forfeiture.

Tucker vs. Ferguson, 22 Wallace 572.

Platt vs. Union Pacific Railroad Co., 99 U. S. 48.

In re Gulf & Ship Island Railway Co., 19 Dep. Dec.

Our fourth contention with regard to this one hundred and twenty sections of certified land is that complainant is barred by laches. It will be noted that the land was certified in 1860. The ten years expired June 3, 1866. Twenty-five years elapse, before the present bill was filed. The following facts with regard to the first one hundred and twenty sections are clearly established by the record.

The forfeiture sought to be enforced in the present litigation is being pressed and contended for by five or six hundred purchasers from the Tennessee & Coosa Railroad Co. who derived their possession from the railroad company, and who now seek in bad faith to repudiate their solemn obligations, evade the payment of the promised purchase money, and obtain title to their respective parcels of land by homestead entry. These parties, and not the government of the United States, are the parties really interested in this suit, and in the event of a reversal of this case would be the sole beneficiaries. **THE UNITED STATES IS ONLY A NOMINAL PARTY.** The language used by the Supreme Court of the United States in the case of the United States vs. DesMoines Co., 142 U. S. 510, is peculiarly applicable to the facts of this case: "We should be closing our eyes to manifest facts if we did not perceive that the government was only a nominal party, whose aid was sought to destroy the title of the Navigation Company and its grantees in order to enable the settlers to perfect their title initiated by settlement and occupancy. It should be well understood that only that class of evidence which commands respect and that amount of it which produces conviction shall make such an attempt successful." And again, as the head note in same case states the legal proposition: "It appearing that the United States is only a nominal party whose aid is

sought to destroy the title of the Navigation Company and its grantees in order to enable settlers to perfect their titles, initiated by settlement and occupancy, the Court holds the case of the United States vs. Beebe, 127 U. S. 338 to be applicable where it was held that when a suit was brought in the name of the United States to enforce the rights of individuals, and no interest of the government is involved the defense of laches and limitations will be sustained as though the Government were out of the case."

We respectfully submit that this Court will be slow to lend its aid to enable purchasers of land from the railroad company to escape the performance of the obligations into which they have voluntarily entered.

The only lands embraced in the bill other than the one hundred and twenty sections is land lying opposite to that part of the road which extends from Gadsden to Littleton, which part of the road was completed and in operation on September 29, 1890, the date of the passage of the forfeiture act.

As to this land there can be no forfeiture under the terms of the forfeiture act, because the act forfeits only "all lands heretofore granted opposite to and coterminus with the portion of any such railroad not now completed and in operation."

As the Tennessee & Coosa Railroad, from Gadsden to Littleton, was completed and in operation on Sept. 29, 1890, it is manifest that lands lying opposite to the part of the road from Gadsden to Littleton are not forfeited.

"In order that an act of Congress should work reversion to the United States for condition broken of lands

granted by them to the State to aid in internal improvement, the legislation must directly, positively, and with freedom from all doubt or ambiguity, manifest the intention of Congress to reassert the title and resume possession."

St. L., I. M. & Sou. Ry. Co. vs. McGee, 115 U. S. 459.

Far from the intention of Congress being manifest that there should be a forfeiture of these lands, it is apparent that these lands were expressly excepted from forfeiture. Then when the entire road was completed, is it not perfectly clear that the title to these lands fell into the land grant company? It will be observed that we do not contend that upon the completion of the 10.25 miles the Tennessee & Coosa Railroad Co. became entitled to this land. Our contention is that as to these lands the forfeiture act granted the Tennessee & Coosa no new or additional rights, and took away nothing from the Tennessee & Coosa Co. The forfeiture act left these lands as it found them—unearned, but subject to be earned. When earned by the completion of the entire line of road, these lands in accordance with every principle of law, justice and equity became the property of the Tennessee & Coosa Railroad Company, or its grantee, Hugh Carlisle.

It will be observed that the Court below found as a fact, based on the evidence of witness Curry, that the Tennessee & Coosa Railroad was completed along its entire line from Gadsden to Guntersville before the filing of the bill and before any act of re-entry on the part of the Government.

The case of Sioux City & St. Paul Railroad Co. 159 U. S. 349, referred to in brief of appellant's counsel is no answer to the view expressed above because that case simply decides that in a case where a land grant company has failed

to construct its entire line it can claim nothing by reason of the construction of a fractional part of a division of ten or twenty miles (as the case may be). In the case now under consideration appellees claim to have earned nothing by virtue of the completion of 10.22 miles of road. Their contention is that upon the completion of the entire line from Gadsden to Guntersville, the title to the land lying opposite to and coterminous with the 10.22 miles of road which was completed and in operation on Sept. 29, 1890, the date of the forfeiture act, became good and complete in them. To put our contention in other words: By the forfeiture act the Government resumed title to all lands lying opposite to and coterminous with the uncompleted portions of the road. It left lands lying opposite to and coterminous with completed portions of the road entirely unaffected by its provisions. These lands remain in the same condition in which they stood before its enactment. Prior to that time there can be no dispute about the proposition that until some act of re-entry, or assertion of forfeiture the land grant company continued clothed with the right to complete its line of road and thereby earn the lands. Then, as the forfeiture act did not affect the lands in controversy, it is clear that after the passage of the forfeiture act the Tennessee & Coosa Railroad Company still had the right to construct the road and earn these lands.

The act certainly means that lands lying opposite to completed portions of the road are exempt from the forfeiture declared by its terms. And when we remember that under the terms of the original granting act, it is not necessary that the earned lands should be opposite to constructed portions of the road, it is manifest that the act does not use the term "portions of road" in the sense of twenty mile section

of road. In other words it is plain that the act does not exempt from forfeiture simply the earned lands, but just as it says forfeits all unearned lands, except such as are opposite to completed portions of road.

There is no merit in the argument made by opposing counsel to the effect that even if the forfeiture act did not embrace the lands lying opposite completed portions of the road, yet the forfeiture could be asserted by a judicial proceeding, i. e., a bill filed by the attorney general to enforce the forfeiture independently of the act. This argument adds nothing to the strength of appellants position for three reasons:

First.—Because when Congress has proceeded to declare the forfeiture and has limited the extent of the forfeiture declared to certain lands, the Attorney-General cannot transgress the limitation prescribed by the act of Congress, go farther than the act prescribes, and seek a forfeiture in any case which the terms of the act exempt from the forfeiture declared therein. Until Congress acts, it is possible that the Attorney-General may authorize the filing of a bill seeking a judicial declaration of forfeiture, but when Congress has acted in the matter and has declared the extent of the forfeiture the Attorney-General cannot disregard the limitations contained in the act of Congress and proceed independently of the act.

Second.—The bill filed in the case at bar is not framed as a bill seeking to enforce a forfeiture by judicial decree independently of the terms of the forfeiture act. The bill does not aver that the road was not completed before the filing of the bill. It at least impliedly admits that the road was completed before the filing of the bill. If it were con-

ceded that the Attorney-General might have filed a bill, basing the right of the Government to assert a forfeiture upon the failure of the Land Grant Co. to earn the lands by the completion of the road before forfeiture asserted, yet certainly no such relief can be granted upon a bill which admits that the land was not subject to the forfeiture declared in the act, and also admits that before the filing of the bill the entire road was completed, the condition of the grant complied with, and the land thereby placed beyond the reach of forfeiture. To sustain a judicial declaration of forfeiture on the ground that the Government by filing its bill asserted a forfeiture before the Land Grant Co. earned the lands by the completion of the entire line of road, the bill must aver, what the bill in the present case wholly fails to aver, that the road had not been completed prior to filing of the bill.

Third.—Even if the bill had averred the failure of the Tennessee & Coosa Railroad Co. to complete the road before the filing of the bill, the complainant could not recover, because the record shows the truth to be that the road was in fact completed and in operation before the bill was filed.

We respectfully submit that the decree of the trial court was right and should be affirmed.

Amos E. Goodhue

Solicitor for ~~Respondents~~.

Appellants

A. S. S.

Sup. Ct. of Location for Appeal

DEC 15 1899
JAMES H. BROWN

Filed Dec. 15, 1899.
Supreme Court of the United States.

No. 55.

UNITED STATES, APPELLANT,

vs.

**THE TENNESSEE AND COOSA RAILROAD COM-
PANY, HUGH CARLISLE, ET ALA, APPELLEE.**

**SUPPLEMENTAL BRIEF OF AMOS H. GOODRUM
ON BEHALF OF APPELLEE.**

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IN THE
Supreme Court of the United States.

No. 53.

UNITED STATES, APPELLANT,

vs.

THE TENNESSEE AND COOSA RAILROAD COM-
PANY, HUGH CARLISLE, ET ALS., APPELLEES.

**SUPPLEMENTAL BRIEF OF AMOS E. GOODHUE
ON BEHALF OF APPELLEES.**

It is contended on behalf of appellant that the portion of the opinion in *Schulenberger vs. Harriman* which is cited in our former brief, to the effect that "the power to sell continues, as before its breach, limited only by the objects of the grant and the manner of sale prescribed in the act," is *obiter dictum* and not authoritative as a decision. A careful analysis of the case will, we respectfully submit, show that the language quoted is not *obiter dictum*, but was essential to the proper determination of the cause. The action was to recover logs, brought by one who was admitted to be in possession of and presumably the owner of the land on which the timber was cut against one Harriman, who seized

the timber as the agent of the State and who justified the seizure under the title vested in the State by the granting act. The plaintiff insisted that after the expiration of the time limited in the act for the completion of the road the trust ceased, and that one of two things was true—either that upon the breach of the condition the title *ipso facto* revested in the United States, or else that the title, remaining in the State, was thereafter a mere naked legal title, with no beneficial ownership and no rights, powers, or duties in connection with the land, and that thereafter the State had no right to sell the land or dispose of it in any way or do anything with it except to act as the mere depositary of the legal title. If either of these contentions were sustained, it is manifest the plaintiff in *Schulenberg vs. Harriman* could not maintain his action. In answering the second of these contentions it became necessary to define the character of the title in the State of Wisconsin, and the rights, powers, and duties attendant upon the trust reposed in the State of Wisconsin, in order to show that the State had such a title as authorized it to seize the timber in question. In thus defining this trust it was material and necessary to the proper decision of the case that the court should determine and declare whether it was true, as asserted by plaintiff's counsel in argument, that the power of disposition, the power to sell the land, had *ipso facto* ceased upon the expiration of the time limited by the terms of the granting act, and therefore the language of the court was directly in response to the issues involved in the case, and the decision is authoritative. *Schulenberg vs. Harriman* was a test case. The object of the suit was to obtain a decision as to the status of the land on which the timber was cut. The opinion of the court in this case has been approved by this court in numerous land-grant cases, in some of which the United States was a party claiming rights under the fourth section of the granting act. For twenty-five years this opinion has controlled the

rulings of the Federal and State courts in passing upon the title to the lands covered by railroad land grants. For a quarter of a century the Land Department has governed itself in the adjustment of numerous land grants by the opinion delivered in this case. The title to millions of acres of land in various parts of the Union rests upon this foundation. As in the case at bar, lands have, under the advice of counsel, been bought and sold in reliance upon this opinion, and the action of the Land Department thereunder, as well settling the law, and as establishing the policy of the Government in the matter of these land grants. For sixteen years Congress, with a full knowledge of the effect of this decision, and also a full knowledge of the fact that it was accepted by the Land Department and furnished the rule by which this department was issuing patents to thousands of acres of land, refused to declare these lands forfeited and defeated several bills introduced looking to the forfeiture of these land grants. Congress also, by the act approved March 3, 1887, directed the adjustment of these grants "in accordance with the decisions of the Supreme Court of the United States." Nothing can be plainer than that Congress has recognized the opinion in *Schulenburg vs. Harriman* as settled law and has acted thereupon. Nothing can be plainer than that Congress has seen good reason to leave these lands in the hands of its chosen trustees for an additional period of time, subject to be disposed of in furtherance of the objects and purposes of the original act; and in passing the forfeiture act of 1890, it doubtless had this decision in view, and therefore did not provide for the forfeiture of any earned or certified land, but only of such land as could, without any judicial proceedings and without the annulment or cancellation of any certificates, be summarily thrown open to entry and disposed of as public land. Again, Congress was informed as to the status of this particular land grant, and knew that one hundred and twenty sections had been certified to the

company and the proceeds applied to the construction of the road; also that the remainder of the land grant lay opposite to a completed portion of the road, and therefore knew and intended that *no* part of this land grant should be subject to the general forfeiture declared by the forfeiture act. In other words, Congress in declaring the forfeiture acted in full reliance upon the language quoted from the opinion of the supreme court in *Schulenburg vs. Harriman* as well-settled law, and relied upon this language to protect the Tennessee and Coosa Railroad Company, struggling to complete its line of road, from a harsh forfeiture. Had Congress not relied upon this fact, it doubtless would have further limited the extent of the forfeiture, or altogether have refused to pass the forfeiture act. To repudiate this opinion at this late day would result in extending a forfeiture beyond the intention of Congress, and thereby judicially declaring a forfeiture under the terms of an act which was passed by Congress under the belief, induced by the former decision of this court, that the provisions of the forfeiture act would not apply to the lands in controversy. To repudiate this opinion at this late day would unsettle the title to vast tracts of land and introduce confusion worse confounded into the administration and adjustment of land grants.

But if the question were a new one, the language used in *Schulenburg vs. Harriman* is correct in principle and in logic. The United States vested the title in these lands in the State as trustee, and authorized the State to sell the lands in furtherance of the objects of the trust. If the trust had been capable of withdrawal at any time by Congress, capital could not probably have been obtained for the building of the road upon such an insecure foundation.

Therefore, Congress provided that for ten years this grant should be irrevocable, and then provided by the insertion of a condition subsequent that at the end of this ten years it might, at its own option, revoke the grant. *Coupled with the legal title in the trustee and inseparably connected with it, was*

the right to sell the land for the uses and purposes of the trust. Now, by the well-settled law this condition subsequent is not self-operative. It cannot be successfully contended that the legal title *ipso facto* was divested out of the trustee and reinvested in the United States at the expiration of the ten years. Then, *can it be successfully maintained that the power to sell the land for the uses and purposes set forth in the granting act was ipso facto at the expiration of the ten years divorced from its inseparable companion, the legal title, and that the effect of the condition subsequent was to destroy the trust with all its powers and duties and leave alive only the legal title in the trustee. By what logic can it be contended that the force of the condition subsequent is sufficient to destroy the power of sale together with all the other elements of the declared trust, and yet insufficient to destroy the bare legal title which is put into the hands of the trustee only for the uses and purposes of the trust.* The only escape from this *reductio ad absurdum* is to declare as this court did in *Schulenburg vs. Harriman*, when this same question was before it, that "the power to sell continues as before its breach, limited only by the objects of the grant and manner of sale prescribed by the act."

A statement made by opposing counsel in oral argument, and also in his brief, to the effect that the railroad was not completed by the Tennessee and Coosa Railroad Company, and that therefore the road was not subject to the burdens of the granting act, is not supported by the record, and is, in point of fact, incorrect. It is true that, in 1890, parties connected with the N. C. & St. L. railway bought the stock in the Tennessee and Coosa Railroad Company, and perhaps the N. C. & St. L. railway itself supplied capital for the completion of the road, and it is true that the road is operated as a branch of the system of the N. C. & St. L. railway, but the corporate entity of the Tennessee and Coosa Railroad Company was

preserved, and the road, now completed, is unquestionably subject to the burdens of the granting act.

Parts of the brief of appellants' counsel seem to be an effort to find some few acres of land between Littleton and the first 120 sections, and thereby secure a technical reversal of this case. We deny that the record shows any such land. On the contrary, the record shows that the court below found as a fact that all the lands in controversy were covered by the two categories—*i. e.*, the first 120 sections and lands lying opposite the completed portion of the road. The lower court had before it certain exhibits to Carlisle's testimony and other original documents which could not be printed in the record, and the original papers, under order of the judge of the circuit court, were transmitted to the court of appeals and inspected by the court of appeals. This will be seen by reference to pages 263 and 264 of the printed record. With this full information before them, the two lower courts found that all the lands were embraced in the categories above mentioned. The Government now furnishes this court no data by which to determine the incorrectness of this finding of fact. This court is unable from the map, to which counsel for the Government in argument calls the attention of the court, to locate Littleton, the point to which the road was completed and in operation at the date of the passage of the forfeiture act. But, again, the bill is not framed to procure an adjustment of the limits of the grant. It contains no averments on which this court can proceed to grant relief as to adjustment of the limits of the grant. There is no contention between the parties as to this matter. An equity court would have no jurisdiction to determine this matter upon the allegations found in the bill. The bill seeks a *forfeiture* of the entire grant and does not, *recognizing* the grant, seek to *adjust its limits*. The bill makes allegations of fraud which are not sustained by the evidence. Neither the railroad company nor its grantees have been called upon to adjust the grant in accordance with the terms of the

granting act and of the forfeiture act. The bill does not aver that there are any lands in this alleged gap between Littleton and the end of the 120 sections. There is nothing in the decree of the court below to prevent any adjustment of the limits of the grant that may hereafter become necessary; and again the assignments of error in the appeal from the circuit court to the circuit court of appeals did not bring any such question before the circuit court of appeals, nor is such a question before this court.

The attention of the court is called to the fact that in 1885 Secretary Lamar recognized the grant in question as an existing and unforfeited land grant, as shown by his opinion in the case of Alabama & Chattanooga R. R. Co. vs. Tenn. & Coosa R. R. Co., found in 5th Departmental Decisions.

Respectfully submitted,

Amos E. Spoolhue

Counsel for Appellees.

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UNITED STATES *v.* TENNESSEE AND COOSA RAIL-
ROAD COMPANY.APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT.

No. 53. Argued December 12, 13, 1899. — Decided February 5, 1900.

The grant of public land made to the State of Alabama by the act of June 3, 1856, c. 41, to aid in the construction of railroads, to be subject to the disposal of the legislature for the purposes named in the act and no other, with a provision that if any of said roads were not completed within ten years the lands remaining unsold should revert to the United States, was a grant *in presenti*; the condition so expressed was a condition subsequent; and the rights and powers of the State continued until the grant should be directly forfeited by judicial or legislative proceedings.

The provision in the act of September 29, 1890, c. 1040, that "there is hereby forfeited to the United States, and the United States hereby resumes the title thereto, all lands heretofore granted to any State or to any corporation, to aid in the construction of a railroad opposite to and coterminous with the portion of any such railroad not now completed and in operation, for the construction and benefit of which such lands were granted, and all such lands are declared to be a part of the public domain," did not operate upon lands opposite completed roads, and such lands were not thereby forfeited or resumed.

The allegation that the sale to Carlisle was without consideration and colorable was not sustained by the evidence.

Although the bill was framed to secure a forfeiture of the entire grant, that does not preclude a forfeiture for a part of it.

THIS suit was brought under the act of September 29, 1890, c. 1040, 26 Stat. 496, to forfeit a land grant made to the State of Alabama in aid of the construction of a railroad from the Tennessee River at or near Gunter's Landing to Gadsden, on the Coosa River, conveyed by the State to the Tennessee and Coosa Railroad Company.

The bill alleges that Congress by the act of June 3, 1856, c. 41, 11 Stat. 17, granted to the State of Alabama in trust for certain railroads, of which the respondent, the Coosa Railroad, was one, every alternate odd-numbered section for six sections in width on each side of the road, with the right of selection

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of others if rights had attached to such alternate sections, within fifteen miles of the line of the road, as follows:

"That a quantity of land not exceeding one hundred and twenty sections, for each of the roads named in said act, and included within a continuous length of twenty miles of each of said roads named therein, may be sold, and when the Governor of Alabama should certify to the Secretary of the Interior that any twenty continuous miles of any of said roads were completed, then another quantity thereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of said roads, may be sold — and so from time to time until said roads were completed, and if any of said roads were not completed within ten years, no further sales should be made, and the lands unsold should revert to the United States."

That the State accepted the grant by an act of its legislature approved January 20, 1858, upon the terms and conditions expressed in the act of Congress, and granted a portion of the lands to the Coosa Railroad.

That the railroad constructed ten and 22-100 miles of road along the line of definite location of survey, to wit, from Gadsden northward toward Gunter's Landing, but did not construct any portion thereof prior to June 3, 1866, and never constructed or completed twenty miles of railroad prior to September 29, 1890.

That by virtue of the act of Congress all the lands unsold at the expiration of ten years from its date reverted to the United States, and that the railroad company did not sell any lands prior to June 3, 1866, and never became entitled to any of the land or to the possession thereof, but that the railroad company selected the lands described in the bill within the six-mile limit and those within the fifteen-mile limit, which selections were approved by the Secretary of the Interior. Exhibits were attached to the bill giving detail descriptions.

That the selections and approval were made upon the filing of a map of definite location and not upon the certificate of the Governor of the State showing that twenty continuous miles

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of road had been constructed, for no section of twenty miles had been constructed before the passage of the act of Congress of September 29, 1890.

That the United States became entitled to the possession of the lands on the 4th of June, 1866, and the right to recover both the title to and the possession of them.

That by the act of September 29, 1890, the United States resumed the title to all the lands which were opposite to and coterminous with any portion of such railroad not completed and in operation at the date of the passage of the act; and that none of the lands described in paragraph 1 and Exhibit "A" were opposite to and coterminous with road constructed and completed at that date.

That the railroad company on the 4th of April, 1887, executed and delivered to Hugh Carlisle an instrument purporting to be a quitclaim deed, by which the company pretended to convey to him seventeen thousand and ten $\frac{33}{100}$ acres of the land granted to it for the consideration of \$21,790; and on the 7th of February, 1887, executed another instrument to Carlisle, by which it attempted to convey to him 23,739 $\frac{51}{100}$ acres, and which recited a payment of \$59,348.70.

That said instruments were executed more than twenty years after the expiration of the time required for the construction of the railroad; that the company had no right or power to convey any title or right; that its officers and Carlisle knew the fact, and for the purpose of preventing the reversion of the lands to the United States the company executed and Carlisle accepted the conveyances. That while they recite a valuable consideration paid by him, no money or valuable thing was paid, but that the whole transaction was merely a device to mislead and deceive for the purpose of enabling Carlisle to set up a claim that he held the lands as a purchaser for value and in good faith from the railroad company. That he is a purchaser *mala fide*, well knowing that the purchase was in violation of the act of 1856; that he holds them under a secret trust for said company and its stockholders, and that he and his relatives are the largest stockholders, and elected themselves, and others subject to

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their control, directors, and by directors so composed the conveyances to him were executed.

That there is valuable timber on the lands which the company and other persons are cutting and carrying away, and valuable mines which they are working, and that the company is collecting the purchase money for lands sold by them, and is alienating other lands, and it is therefore necessary to have a receiver appointed.

A number of persons beside Carlisle are made defendants on the ground that they are in possession of some of the lands, and the Nashville &c. Railway Company and the Manhattan Trust Company are also made defendants on the ground that they claim an interest in a large part of the lands under contract with the Tennessee and Coosa Railroad Company, which it is averred were taken with knowledge of the rights of the United States.

The prayer is for a receiver and an injunction and cancellation of the selections made by the company, the conveyances and contracts made by it, and for general relief.

The Exhibits A and B contain a list of lands respectively within the six- and fifteen-mile limit, and Exhibits D and E are the conveyances to Carlisle.

A receiver was appointed upon the bill without notice, and an injunction *pendente lite* issued. The injunction was subsequently modified to exclude from its operation certain of the lands.

Carlisle filed a demurrer and answer to the bill. The answer admitted all the allegations of the bill material to the propositions presented on this appeal except those charging deception and fraud in the conveyances to him, but specifically alleged that they were executed in good faith and for valuable consideration, and that the lands included in the deed from the company to him (Exhibit "D" of original bill) are all opposite to and coterminous with the ten and 22-100 miles of completed road. By an amendment to the answer it was alleged that said lands were within six miles of the line of definite location of the road and within the primary granted limits.

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It was further alleged that he contracted with the railroad company in 1859 to build the road; that in 1860 the company executed a mortgage upon its franchises and other property, especially upon the lands granted by Congress, to secure 400 bonds, each of the value of \$1000, issued by the company, and eleven of them were pledged with him to secure the amount due him for work done prior to 1861, and that at the time the civil war broke out he had 400 hands working on the road, and was progressing rapidly with the building of the same. That during the war and after the war his and the company's financial condition prevented further construction. In 1871 the company made a conditional sale of the road to the East Alabama and Cincinnati Railroad Company to complete the road, but that company only built five miles of it between Gadsden and Attalla; that in 1883 the Coosa company resumed possession, and passed a series of resolutions approving and ratifying what he had done, constituting him its financial agent with power to construct, equip and put in running order the road from Attalla to Guntersville, and empowered him to use all the assets of the company; and agreed to pay him out of the assets the original cost and expenses that he should incur in the construction, equipment and putting the road in running order, together with twenty per cent in addition for superintendence and advances made by him; and that he retain a lien on the railroad and its franchises, both real and personal, until the costs and expenses incurred by him be fully paid off, together with said twenty per cent in addition. The said resolutions also revived and renewed the indebtedness due to him for work done prior to 1860.

That he put forth every energy to build the road, and expended in the work under a contract with the company large sums of his private resources; that the company had no money and no other resources except said lands, and no means except as supplied by him.

That in 1886 the road was completed as far as Littleton, a distance of ten and 22-100 miles; that during all this time the money due him for work done prior to 1861 had not been paid, and that sum, amounting to \$47,000, and the money

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expended afterwards by him, amounted to \$85,750.92, and that his account was submitted to the board of directors of the company and was credited and approved.

That in February, 1887, the directors, desiring to pay him, and having no assets, offered to convey the lands described in Exhibit "E" to the bill in payment *pro tanto* of his account at two dollars and a half per acre; that he finally agreed to accept twenty-three thousand seven hundred and thirty-nine and 57-100 acres at said price, and the company conveyed the same to him absolutely, without any trust or reservation whatever, and that after receiving such conveyance there still remained due him \$26,401.27.

That on the 2d of April, 1888, the company conveyed to him about 16,400 acres of land, described in Exhibit "D," attached to the original bill, at the price of one dollar and twenty-five cents per acre, which was the full value of the interest of the company in the lands, because they lay within the conflicting limits of the grants to the company and the Alabama and Chattanooga Railroad Company, and the Coosa company only owned an undivided moiety; that the consideration was money due the respondent as aforesaid, and the conveyance was absolute and without any trust or reservation.

That all the lands described in Exhibit "E" are a part of the first one hundred and twenty sections of the grant, and are opposite to and coterminous with the first twenty miles of the railroad as shown by the map of the definite location, which was duly filed in accordance with the act of Congress, and are included in the lands which the company was authorized to sell in advance of the construction of any portion of the road. And it was alleged in an amendment to the answer that the company sold lands within the first one hundred and twenty sections at divers times to divers persons for two and 50-100 dollars per acre, usually on credit and notes taken and placed in his, Carlisle's, hands as collateral security for the money due him, and most of the notes still remain in his hands, and only a small amount has been paid thereon; that the vendees of the company are in possession, and that he

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during the years 1887 and 1888 sold for a valuable consideration the lands described in Exhibit "E" of the original bill to purchasers in good faith, who paid for the same and received his warranty deed. A list of the purchasers is attached to the answer.

The answer of the railroad company was substantially the same as that of Carlisle, and the answers of the other respondents allege their respective relations to the lands, but are not otherwise material to the propositions in controversy.

Upon the testimony submitted, oral and documentary, the Circuit Court found as follows:

"First. That prior to the 29th day of September, 1890, the Tennessee and Coosa Railroad Company had sold to *bona fide* purchasers all the lands embraced in the first 120 sections, which by the terms of the granting act it was authorized to sell in advance of the construction of the road. That these sales were *bona fide* and made to aid in the construction of the road. That the allegations of the bill, that the sale to Carlisle was without consideration and colorable, are not sustained by the evidence, but the sale to Carlisle was *bona fide* and based on good consideration, and the proceeds of the sale used in the construction and equipment of the road.

"Second. The court finds that the Tennessee and Coosa Railroad from Gadsden to Littleton, a distance of ten and 22-100 miles, was completed and in operation on and before the 29th day of September, 1890, and that the lands described in Exhibit D to the original bill, to wit, the lands embraced in and conveyed by the deed from the Tennessee and Coosa Railroad Company to Hugh Carlisle, bearing date the 4th day of April, 1887, are lands which lie opposite to that part of the road which was completed and in operation on the 29th day of September, 1890, and therefore not within the lands forfeited by the act of September 29, 1890.

"The court is therefore of the opinion that there has been no forfeiture of the lands as to which a judicial declaration of forfeiture is sought by the bill, and it is accordingly ordered and decreed that the relief sought by the bill be denied and the bill dismissed."

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In the opinion of the court it was said, "that the lands embraced in the first one hundred and twenty sections of the granting act, the railroad company was authorized to sell in advance of the construction of the road, and that the parties to whom such sales were made, took good title, and there can be no recovery or restitution of any of these lands to the public domain in this case. 2. That the lands described in Exhibit D to original bill are lands which lie opposite to that part of the road which was completed and in operation on the 29th day of September, 1890, and are not within the lands covered by the act of September 29, 1890." 81 Fed. Rep. 544.

The decree of the Circuit Court was affirmed by the Circuit Court of Appeals, 52 U. S. App. 171, and the United States took this appeal.

Mr. Charles W. Russell for appellants. *Mr. Solicitor General* was on his brief.

Mr. Amos E. Goodhue for appellees.

MR. JUSTICE McKENNA delivered the opinion of the court.

The questions which primarily arise on this appeal are based on the provisions of the granting act of 1856 and the forfeiting act of 1890.

The United States contend that the provisions of the former caused a reversion of the title in 1866; the contention of appellees is that some affirmative action, legislative or judicial, on the part of the grantor, was necessary for the forfeiture of the grant, and that until such action the title and all the powers conferred by the act of 1856 continued and could be exercised. And further, that the act of 1890 was the measure of forfeiture.

By the act of 1856 it is enacted —

"That there be and is hereby granted to the State of Alabama, for the purpose of aiding in the construction of railroads; from the Tennessee River, at or near Gunter's Landing, to Gadsden, on the Coosa River, . . . every alternate section of land designated by odd numbers for six sections in width on each side of each of said roads."

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"SEC. 3. That the lands hereby granted to the said State shall be subject to the disposal of the legislature thereof for the purposes aforesaid and no other. . . .

"SEC. 4. That the lands hereby granted to said State shall be disposed of by said State only in manner following, that is to say: That a quantity of land, not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each such roads, may be sold; and so, from time to time, until said roads are completed; and if any of said roads is not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States."

The material part of the act of 1890 is as follows:

"*Be it enacted*, That there is hereby forfeited to the United States, and the United States hereby resumes the title thereto, all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminous with the portion of any such railroad not now completed and in operation for the construction and benefit of which such lands were granted, and all such lands are declared to be a part of the public domain."

These principles are established: That acts like that of 1856 convey a present title, that the conditions expressed in them are subsequent, not precedent, and the rights and powers of the grantee continue until the grant is directly forfeited by legislative or judicial proceedings. If the cases were less certain, less directly applicable to the case at bar, we might attend in detail to the able argument of the counsel for the United States.

In *Schulenberg v. Harriman*, 21 Wall. 44, the leading case, the road in aid of which the grant was made was not con-

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structed, the ten years' limitation upon the sale of the land had expired, and of the provision that the lands should revert to the United States it was said that it was "no more than a provision that the grant shall be void if a condition subsequent be not performed." Sheppard's Touchstone was cited and applied as follows:

"In Sheppard's Touchstone it is said: 'If the words in the close or conclusion of a condition be thus, that the land shall return to the enfeofor, etc., or that he shall take it again and turn it to his own profit, or *that the land shall revert*, or that the feoffor shall *recipere* the land, these are, either of them, good words in a condition to give a reëntry—as good as the word "reënter"—and by these words the estate will be made conditional.' The prohibition against further sales, if the road be not completed within the period prescribed, adds nothing to the force of the provision. A cessation of sales in that event is implied in the condition that the lands shall then revert; if the condition be not enforced the power to sell continues as before its breach, limited only by the objects of the grant, and the manner of sale prescribed in the act.

* * * * *

"In what manner the reserved right of the grantor for breach of the condition must be asserted so as to restore the estate depends upon the character of the grant. If it be a private grant, that right must be asserted by entry or its equivalent. If the grant be a public one it must be asserted by judicial proceedings authorized by law, the equivalent of an inquest of office at common law, finding the fact of forfeiture and adjudging the restoration of the estate on that ground, or there must be some legislative assertion of ownership of the property for breach of the condition, such as an act directing the possession and appropriation of the property, or that it be offered for sale or settlement. At common law the sovereign could not make an entry in person, and, therefore, an office found was necessary to determine the estate, but, as said by this court in a late case, 'the mode of asserting or of resuming the forfeited grant is subject to the legislative authority of the government. It may be after judicial investi-

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gation, or by taking possession directly under the authority of the government without these preliminary proceedings.' In the present case no action has been taken either by legislation or judicial proceedings to enforce a forfeiture of the estate granted by the acts of 1856 and 1864. The title remains, therefore, in the State as completely as it existed on the day when the title by location of the route of the railroad acquired precision and became attached to the adjoining alternate sections."

The power of sale of one hundred and twenty sections in advance of the commencement of the construction of the road was impliedly decided. That power, however, came more explicitly into consideration in *Railroad Land Co. v. Court-right*, 21 Wall. 310, where again a similar granting act was passed on. The court reaffirmed the principles expressed in *Schulenberg v. Harriman*, and said again by Mr. Justice Field:

"It is contended by the defendants, *first*, that under the act of Congress of May 15, 1856, no lands could be sold by the State until twenty continuous miles of the road were constructed; *second*, that if one hundred and twenty sections could be sold in advance of such construction, they could only be taken from lands adjoining the line of the road from its commencement on the east; and, *third*, that the grant by the State to the first company was upon conditions precedent, which not having been complied with, the title did not pass. Neither of these positions can, in our judgment, be maintained. The act of Congress by its express language authorized a sale of one hundred and twenty sections in advance of the construction of any part of the road. It was only as to the sale of the remaining sections that the provision requiring a previous completion of twenty miles applied. It is true it was the sole object of the grant to aid in the construction of the railroad, and for that purpose the sale of the land was only allowed, as the road was completed in divisions, except as to one hundred and twenty sections.

"The evident intention of Congress in making this exception was to furnish aid for such preliminary work as would be required before the construction of any part of the road. No conditions, therefore, of any kind were imposed upon the State

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in the disposition of this quantity, Congress relying upon the good faith of the State to see that its proceeds were applied for the purposes contemplated by the act."

Counsel for the United States attempts to distinguish the *Courtright* case from the case at bar, and asserts that in *Schulenberg v. Harriman* the power of the State to sell, subject or not subject to the grantor's rights after the expiration of ten years, although the road had not been finished, was not at issue; and any expressions on that topic were mere dicta. We do not assent to this view. Such power was a necessary consequence of the principles announced, and they have a more extensive authority and application than to the instance in that case.

The title passed to the State, it was decided, continued in the State with all its attributes and power, except as expressly limited, until it should be resumed by the grantor by appropriate proceedings for breach of conditions. Hence the logs in that case, though cut upon land to aid a railroad which had not been constructed, and after the time designated for its construction, and after which all unsold lands should revert to the State, was held to belong to the State. And in the *Courtright* case upon the same principles it was held that lands sold by the railroad without constructing the road carried title to the vendee. There was a reassertion and an application of the same principles in *United States v. Loughrey*, 172 U. S. 206.

It follows that by the act of June 3, 1856, the State of Alabama took the title to the lands in controversy upon conditions subsequent, and conveyed such title upon the same conditions to the Coosa Railroad; and that it continued in the railroad until determined by proceedings, legislative or judicial, for such forfeiture, and until such determination all the rights and powers conferred by the act continued and could be exercised.

Those rights and powers were (1) to sell 120 sections of land in advance of the construction of any part of the road; (2) to sell a like quantity upon the completion of any twenty miles of road.

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The first power, it is claimed, was exercised by sales to *bona fide* purchasers. The condition of the second power was not performed — twenty continuous miles of road were not completed at the time of the passage of the act of 1890. But it is not denied that ten and 22–100 miles were completed before the passage of that act.

1. The Circuit Court found that the first power was exercised as claimed. In other words, that the lands embraced in the first one hundred and twenty sections were sold to *bona fide* purchasers in aid of the construction of the road, and “that the allegations of the bill, that the sale to Carlisle was without consideration and colorable, was not sustained by the evidence, but the sale to Carlisle was *bona fide* and was based on good consideration, and that the proceeds of the sale were used in the construction and equipment of the road.” We think that the findings are sustained by the evidence.

2. By the act of 1890 the United States forfeits and “resumes the title thereto all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminous with the portion of any such railroad not now completed and in operation for the construction or benefit of which such lands were granted, and all such lands are declared to be a part of the public domain.”

The necessary implication of these provisions seems to be that lands opposite completed road are not forfeited or resumed. But the counsel for the United States contests or seems to contest the implication. He says: “The general forfeiture act of September, 1890, intends to forfeit lands opposite unconstructed portions of road. It intends to forfeit them *for that reason*. It intends by no means to say that no lands are to be otherwise and for other reasons forfeited; that all conditions precedent in all cases of land grants are waived. It purports to waive nothing, but to forfeit for a cause common to all the old grants of lands for railroads — failure to construct prior to September, 1890.” And again: “That act of 1890 was intended to take away lands and not to grant them, and it is too well settled to need discussion that lands and rights of the public cannot be granted away except in

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the most *explicit, affirmative* terms." This, perhaps, is but another form of the contention which we have considered and refuted, but we may further say that its error is in assuming that the act of 1890 is claimed to be a grant. The act of 1856 was the grant. The title it conveyed continued until resumed, and as to what lands it was resumed the act of 1890 defines.

These considerations dispose of the contentions as to the 120 sections and the lands opposite completed road, but it is assigned as error that the Court of Appeals omitted to direct "a decree in favor of the United States as to lands not within either the said 120 sections or the 17,410.33 acres [lands opposite completed road], whether sold or not." And it is said: "The road being thirty-six miles and a fraction long, and the 120 sections absolutely required to be along twenty consecutive miles, and being in fact, as certified before the war of 1861, at and near the Guntersville end, sixteen miles and a fraction of road, at least, remain to be considered. Ten miles, beginning at the Gadsden end, were constructed before the act of 1890, leaving at least six miles; so that, obviously, the easy method resorted to by the lower courts of dividing all the lands into 120-section lands and lands opposite constructed road ignores our rights along six miles, to say nothing of the large body of lands along the twenty miles referred to but *not* in the 120 sections of place and indemnity certified before the war, and opposite *uncompleted* road in 1890."

This, it is replied, is contradicted by the findings of the Circuit Court, and that the record affords no evidence to dispute the findings. The findings were, as we have seen, that the lands embraced in the first one hundred and twenty sections were sold to *bona fide* purchasers; that Carlisle was such; that the road from Gadsden to Littleton, a distance of 10.22 miles, was completed and in operation on or before the 29th of September, 1890, and that the lands conveyed to Carlisle by deed dated April 4, 1887, were opposite to that part of the road. The conclusion was that "there has been no forfeiture of the lands as to which a judicial declaration of forfeiture is sought by the bill, and it is accordingly ordered

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and decreed that the relief sought by the bill be denied and the bill dismissed."

Manifestly this decision is dependent upon the identity of the lands described in the bill with those embraced in the first one hundred and twenty sections and those opposite the ten miles of completed road. But this does not seem to be the fact. The bill gives a description of the lands by townships, ranges and sections, and at the argument a map was used showing them, their relation to the railroad, and its location and termini. It also showed the end of the first one hundred and twenty sections. Assuming the map to be correct, (and it is not questioned,) some judgment may be formed of the length and location of the road, the relative situation of the lands described in the bill to the road — to its completed and uncompleted part; and it appears that there are a number of acres of land south of the first one hundred and twenty sections, and between them and Littleton, (a distance of six miles,) of which a forfeiture should have been declared. In other words, it appears from the evidence and admissions that the road is thirty-six miles long, that the first one hundred and twenty sections were selected along a continuous length of twenty miles of the road from Gunter's Landing southward, and that the part of the road which was completed at the date of the forfeiting act was from Gadsden northward ten and $\frac{22}{100}$ miles, and terminated at Littleton. It is evident, therefore, that lands opposite the road from Littleton, northward six miles, are not embraced in the first one hundred and twenty sections and were not opposite completed road September 29, 1890, and hence were forfeited by the act of Congress of that date, (*supra*.) and if included in the description of the bill should be declared forfeited.

It is urged, however, by appellees that the decree should not be reversed, because the bill was framed to procure a forfeiture of the grant, not to adjust its limits, and because the question was not raised by the assignment of errors on the appeal to the Circuit Court nor on this appeal. Neither reason is sufficient. We may notice a plain error, though not assigned, and the prayer in the bill for a for-

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feiture of the entire grant did not preclude a forfeiture of a part of it.

We think, therefore, a further investigation on the particular point indicated is required by the Circuit Court, and return the case for such investigation.

The decree of the Circuit Court of Appeals is reversed, and the case remanded to the Circuit Court with directions to proceed in accordance with this opinion.